

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : 13-CR-607

-against-

US District Court
Central Islip, NY

PHILLIP A. KENNER and
TOMMY CONSTANTINE,

October 5, 2020

Defendants.: 11:30 am

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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography.
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1 (Call to Order of the Court.)

2 MS. KOMATIREDDY: Saritha Komatireddy for the
3 United States. I am joined by AUSA Matthew Haggans, AUSA
4 Diane Leonardo, and AUSA Madeline O'Connor.

5 I am also joined by the case agents on this
6 case: FBI Special Agent Matthew Galioto and IRS Special
7 Agent Joshua Wayne.

8 THE COURT: Good morning to all of you.

9 MR. BRISSENDEN: Good morning, your Honor.
10 Matthew Brissenden, standby counsel for Mr.
11 Kenner.

12 THE COURT: Good morning, Mr. Brissenden.

13 MR. KENNER: Phil Kenner, defendant.

14 THE COURT: Good morning, Mr. Kenner.

15 MR. TALKIN: Good morning, your Honor. Sanford
16 Talkin for Mr. Constantine, who is on the telephone.

17 And, your Honor, if I do touch my phone during
18 the proceedings, it is because I am communicating with him
19 by telephone.

20 THE COURT: That's fine.

21 And Mr. Constantine, are you on the phone?

22 MR. CONSTANTINE: Yes, your Honor.

23 THE COURT: At any point if you can't hear, let
24 us know. And if you get cut off, text Mr. Talkin right
25 away so he can let us know that you have dropped off the

1 line.

2 Okay, Mr. Constantine?

3 MR. CONSTANTINE: Yes, sir, your Honor.

4 THE COURT: And I believe we also have some of
5 the lawyers on the phone in connection with forfeiture
6 issues, although we are not going to be discussing
7 forfeiture today.

8 Does the government know, are there any victims
9 on the phone?

10 MS. KOMATIREDDY: Yes, your Honor. We had
11 advised before today that we would be calling victims who
12 plan to make statements.

13 THE COURT: That's fine.

14 And you do have victims present in court. Do
15 you have a list of who is here?

16 MS. KOMATIREDDY: Yes, your Honor. I can speak
17 to that.

18 THE COURT: And do you have a list here?

19 MS. KOMATIREDDY: Yes, your Honor.

20 Speaking and present in court are Mr. Bryan
21 Berard, Mr. John Kaiser, Mr. Michael Peca, and Mrs.
22 Kristin Peca.

23 Prior to today's proceeding, Ms. Ethyl Kaiser
24 also submitted a letter that she asked be read in court,
25 which I will do at the appropriate time, your Honor.

1 Also present in court are Mr. Nicholas
2 Privitello, Mr. Bob Rizzi, and Mr. Theodore Hughes.

3 THE COURT: What was the last name?

4 MS. KOMATIREDDY: Hughes.

5 THE COURT: Good morning to all of you.

6 We are here for sentencing today. Are both
7 sides ready to proceed?

8 Is the government ready to proceed?

9 MS. KOMATIREDDY: Yes, your Honor.

10 THE COURT: Mr. Kenner, are you ready to
11 proceed?

12 MR. KENNER: Yes, sir, your Honor.

13 THE COURT: I'm going to ask Mr. Kenner to pull
14 the microphone a little closer. You can remain seated.
15 You don't have to stand.

16 MR. KENNER: Thank you.

17 THE COURT: I just want to confirm that
18 obviously we had the first stage of the sentencing, with
19 respect to the objections to the presentence report, back
20 in February. On February 13. And then the pandemic hit,
21 so we had to adjourn the March conclusion, which we are
22 conducting today.

23 I want to confirm with both sides that, with
24 respect to the documents from the probation department, we
25 have the presentence report, we have the probation

1 department's recommendation, and we have the two addenda.

2 Have both sides received those and reviewed
3 them?

4 From the government?

5 MS. KOMATIREDDY: Yes, your Honor.

6 THE COURT: Mr. Kenner?

7 MR. KENNER: Your Honor, I'm not sure I received
8 the probation's second addendum. I have seen the July
9 2016 addendum.

10 THE COURT: It is one page. I will give you my
11 copy.

12 MR. TALKIN: Your Honor, while we are doing
13 that. I got a text from Mr. Constantine. He requested
14 that all the people that are on the line mute their lines
15 because there is so much background noise he is having
16 trouble.

17 THE COURT: Yes.

18 Everyone who is on the phone should mute their
19 lines so that it does not create background noise.

20 (There was a pause in the proceedings.)

21 THE COURT: The court reporter is asking for
22 everybody to remain seated so they can stay close to the
23 microphone. So everyone can remain seated.

24 Obviously, this relates to all the issues that
25 we discussed in February. So you have all the documents,

1 Mr. Kenner?

2 MR. KENNER: Yes. I believe so.

3 THE COURT: All right. So just to summarize.

4 With respect to the guidelines calculation from
5 the February proceedings, I ruled on various objections in
6 calculating the offense level to be a level 39, criminal
7 history category I, resulting in an advisory guidelines
8 range of 262 to 327 months. Okay.

9 Obviously, Mr. Kenner, your objections are all
10 preserved for purposes of appeal with respect to that.

11 Are there any outstanding issues with respect to
12 objections?

13 From the government?

14 MS. KOMATIREDDY: No, your Honor.

15 THE COURT: Mr. Kenner?

16 MR. KENNER: No, sir.

17 THE COURT: So now we will proceed to the
18 remainder of the sentencing.

19 The way we will conduct this sentencing
20 proceeding is, I will hear from the victims, the ones
21 speaking first under the Victim's Rights Act, which is
22 reflected in Rule 32.

23 I just note for the record that Mr. Owen Nolan's
24 counsel had requested to speak on his behalf by phone.

25 Is counsel for Mr. Nolan on the line?

1 I guess not. Does the government know if she is 7
2 online?

3 MS. KOMATIREDDY: We don't know, your Honor.

4 THE COURT: In any event, Mr. Kenner objected.

5 Under the rule, we give victims the right to
6 speak at the sentencing. The request made by counsel
7 indicated that she requested permission to appear by
8 phone, which is obviously fine. But in connection with
9 speaking on his behalf at his sentencing, unless there was
10 something in the letter indicating his inability to appear
11 in person and/or her inability to speak by phone as well,
12 given the pandemic, because the letter did not indicate
13 any reason why Mr. Nolan could not speak on his own
14 behalf, I denied that request.

15 I did note, however, in my order that to the
16 extent she wanted to address the issue of restitution, we
17 are not addressing the issue of restitution today. It
18 would be too much to do in one day and we have ongoing
19 submissions in connection with that. If Mr. Nolan's
20 counsel wants to be heard with respect to the restitution
21 amount, that discussion will take place on the date that
22 we set for that at the conclusion of this proceeding.

23 So I will hear from the victims, I will then
24 hear from Mr. Kenner, and then I will hear from the
25 government and then I will impose the sentence. So that

1 is how we will proceed.

2 I would just ask that everyone keep their masks
3 on during the proceedings, obviously we have done our best
4 so everybody maintains social distance in the courtroom.
5 I know it is uncomfortable to speak with masks on, but we
6 are just going to have to bear with it.

7 And we have the microphone there, and the
8 microphone is excellent so you don't have to be worried
9 that. I will be able to understand you with the masks.
10 So I ask that everybody keep their mask on at all times.

11 So I will hear from the victims first. I don't
12 know whether the government has discussed the order of who
13 wishes to speak first.

14 MS. KOMATIREDDY: Yes, your Honor. Mr. Berard
15 will be going first.

16 THE COURT: And let me say, with respect to the
17 victims. I want to say this to all of you collectively.

18 I am not going to say anything after each of you
19 speaks. I will wait until everyone speaks. I am going to
20 have something to say to you overall, after everyone
21 speaks.

22 So I don't want you to have a reaction if I
23 don't say anything after you speak. I will address your
24 comments overall. Obviously, I heard you at the trial and
25 I know your testimony. Even though I am in the Circuit

1 Court now, I have kept this case because I presided at the
2 trial and I am conducting the sentence. I did not assign
3 this case to another judge.

4 So Mr. Berard, you speak first. Please speak
5 slowly and clearly so that the court reporter can get
6 everything down.

7 MR. BERARD: Good afternoon, your Honor.

8 Actually, on this date 24 years ago, I played my
9 first NHL game. I have been waiting for this day to end a
10 tough and sad chapter in my life.

11 First, I would like to thank the government for
12 their hard work, especially Matt Galimoto.

13 Next, I would like to thank the court. I know
14 your Honor has shown great patience and fairness and
15 treated both defendants and victims with respect. Thank
16 you.

17 I know your honor will impose a fair sentence to
18 consider what Phil Kenner did and the impact that his
19 crimes had on the victims including me.

20 At 17 years old, Phil started to recruit me and
21 told me I needed to have someone to watch my back and the
22 money I made. Phil promised me he would make sure that I
23 would be protected with him as my financial advisor.

24 I was the number one draft pick in the 1995 NHL
25 draft, and in 1997 I won the Calder trophy as the top

1 player in the NHL. I had the honor of playing for the
2 United States in the 1998 Winter Olympics.

3 On March 11, 2000, I basically lost my right eye
4 in a game by getting hit with a stick. The insurance
5 company paid me \$6.3 million and everyone said I would not
6 play hockey again. In 2001 I made a comeback. I gave the
7 money back to the insurance company and ended up playing
8 seven more years in the NHL.

9 By 2010 I was done with hockey and looking
10 forward to my new life. Phil had promised me that if I
11 focused on my hockey game, he would focus on building my
12 personal fortune.

13 Judge, Phil would often spend holidays with me
14 and my family. And now, looking back, it is obvious that
15 he was playing me. Getting me to trust him.

16 My mom. My mom never felt good about Phil. I
17 should have listened to my mom.

18 Judge, Phil Kenner robbed me of my life. When I
19 realized all the moneys I earned were gone, I was in
20 shock. I vividly remember walking for months in shock. I
21 was depressed to the point of being concerned with my own
22 well-being. I would just cry by myself.

23 It wasn't only the money, judge. It was a guy I
24 knew for 15 years. He was a friend that robbed me. That
25 I trusted. But, judge, Phil Kenner is not just a

1 financial advisor who robbed dozens of his clients.

2 Judge, please understand that Phil Kenner is
3 much worse than that. When I started to discover Phil's
4 fraud, he didn't run. He didn't hide. He tried to
5 destroy me and John Kaiser. Why? Because we were
6 exposing him for the fraud he is.

7 I suddenly found myself being called a drug
8 dealer. Phil actually wrote a letter to the DEA in Rhode
9 Island. Phil spread the word that I'm evil; I'm a traitor
10 who was out only for myself. To this very day, some
11 former NHL players think that I had something to do with
12 them not getting their money.

13 Judge, Phil Kenner will never, ever stop trying
14 to hurt me or John Kaiser or some of his other victims.

15 I beg this court to understand that Phil Kenner
16 was truly a menace to society. Most people would have
17 accepted their guilt and begged for forgiveness. Phil
18 Kenner will never do that. Phil Kenner sits in prison and
19 plots his revenge, judge. He will never change. So I ask
20 this court, I beg this court, keep him in prison so that
21 he can't come out and go after other victims.

22 Judge, not only has Phil Kenner ruined the lives
23 of 20 NHL players, but also their families. He did that
24 to generations of families. He deserves, and I pray the
25 court gives him, the maximum time allowed under the law.

1 Thank you.

2 THE COURT: Thank you, Mr. Berard.

3 MS. KOMATIREDDY: At this time, your Honor, I
4 would like to read the letter submitted by Ethyl Kaiser.

5 THE COURT: Yes. I did receive it but you can
6 read it out loud.

7 MS. KOMATIREDDY: It is dated March 8, 2020.

8 *I would like to start by telling you a little*
9 *about myself so you can understand how I feel about this*
10 *person.*

11 *I came from a family of nine; very poor, never*
12 *having enough food. I had to worry about finding*
13 *cardboard to fill my shoes. I knew I wanted a big family*
14 *of my own but never have them without. So I had eight*
15 *children, worked three jobs, slept 4 hours a day, and I*
16 *made it, only to have it taken away.*

17 *I am 86 years old and I don't fear this person.*
18 *What could he do to me? I fear for my son because this*
19 *person is not done with his evil doings. I feel he's just*
20 *beginning. He's hurt a lot of people and took a lot of*
21 *hard work from them. He is a very dangerous person. I*
22 *only pray he pays for his evil deeds.*

23 *Thank you, your Honor.*

24 Signed, Ethyl Dolores Kaiser.

25 THE COURT: Thank you.

1 Who would like to speak next?

2 MS. KOMATIREDDY: Next, your Honor, will be Mr.
3 John Kaiser.

4 THE COURT: Good morning, Mr. Kaiser.

5 JOHN KAISER: Good morning, Judge.

6 I just want to thank you. This has been a tough
7 road for everybody.

8 I also want to thank the government, especially
9 Matt Galioto for his tireless work.

10 It is tough hearing my mom write that letter.
11 She is 88 years old. This is the last thing she needed.
12 The last thing. But we are here and hopefully we can
13 finally get past this.

14 There were a lot of victims that weren't, you
15 know, great hockey players; just regular guys. Like Nick
16 Privitello, electrician. Working hard. Working extra
17 hours. Saving money. Guys like Bob Rizzi, police officer
18 for 32 years, working hard. Again, everyone working hard
19 so that when it gets later in life, that they can relax a
20 little bit and just enjoy their family.

21 My brother Keith, he's had a rough road. And
22 he's in a wheel chair; having a hard time medically. I've
23 been helping them out every month, along with my mom.
24 Because they don't have any more savings. You're talking
25 about pensions.

1 And what Bryan said: It went through
2 generations. This didn't just affect us.

3 And once Kenner got his claws into me, that
4 opened him up for my family, for my friends, because my
5 family and friends trusted me. So I have that burden for
6 the rest of my life.

7 But just getting back to my mom. She taught me
8 good work ethics. So did my dad. My dad worked until he
9 was 68, until he was in a bad accident and he died. So I
10 wanted to do things different. So I started at 10, 12
11 years old in construction, working my butt off. I started
12 doing renovations, doing building. At the same I became a
13 police officer in my early 20s and I worked midnights and
14 I went to the construction site every day. That's what I
15 did because I wanted to have a life where I didn't have to
16 go to work at 68, like my dad.

17 It turned out, it didn't work out like that. So
18 in June 21, 2005, that's kind of when I started turning my
19 life around. That was the day my wife and I lost the
20 baby. That was also the day when Kenner saw an
21 opportunity for investment, which he ended up getting from
22 me and family and friends.

23 Also, that was a significant day for him. That
24 was the first day he actually forged my name. On that
25 date, if you can believe that. In 2006, I was working on

1 another house, selling a house in California. That
2 actually sold and paid millions of dollars. Turns out,
3 that money did not go to me. It went to Kenner and
4 Constantine.

5 But while I was flying back and forth, I met a
6 girl named Kristie Myrick who used to work for Phil Kenner
7 as an assistant. Well, it turns out she had a falling out
8 with him. And during that, once it happened, because
9 Kristie Myrick discovered that he was stealing from hockey
10 guys, and then it was game on for Phil Kenner. He did the
11 usual: Destroyed her credibility first, hit her with a
12 bunch of lawsuits. Just backed her into a corner, saying
13 that she was sleeping around, was a whore, all kinds of
14 bad stuff.

15 And fast-forward to 2010, when I was on the
16 other side of that, when Kenner realized that myself,
17 Bryan, and the Pecos were working with the FBI, then it
18 was our turn. And at that point, all of a sudden he
19 turned it on. It became, how I made my money? I was a
20 cop in Brooklyn working for the mob, shaking drug dealers
21 down.

22 Then, anyone who would listen, any of his
23 clients that were still around, that's what he told. But,
24 like I told him on the phone, that only works if nobody
25 knows me. But they met me. They know I wasn't like that.

1 When I started working over in Diamonte to try
2 to pull that back in one good investment we had, he said I
3 was working in cartels. It just, it just never ended.

4 Then what happens? The lawsuits. Then the
5 lawsuits. Because he knows at this point we don't have
6 money to defend, so he comes back at us. And that is his
7 wheelhouse. And he did not stop. He was relentless.

8 Then he would send demand letters about Led
9 Better. Led Better was the property out East, if you
10 remember. He sent it. He wanted money. He wanted it
11 now. He sent threatening letters to my wife. He did the
12 same thing reference Hawaii. He said I wouldn't back pay.

13 Here he is, the same fraud. He just wouldn't
14 stop and was relentless. And then, Judge, even after he
15 was arrested -- right? -- he made a website *Let's Save*
16 *Kenner*, something like that. And in that of course he
17 exposed my social security number, all my private
18 information so that I had different frauds and credit card
19 companies and everything else that would come from it.

20 And then of course he called the IRS. All the
21 usual stuff.

22 And then, even from jail, sending a demand
23 letter reference my interest in Baja Ventures.
24 Threatening lawsuits. Calling my wife. And then it just
25 happened to be, even when I was in Mexico, three thugs

1 actually appeared at my apartment. Why? Nobody even knew
2 me, so it wasn't because they were looking to do a
3 burglary.

4 Judge, this guy is a sick individual. He's
5 dangerous. And will stop at nothing. Nothing. And
6 unlike what my mom said, I'm not afraid of him. He
7 doesn't have the balls to go after someone like me. But
8 what he does, he goes after the wives, girlfriends, the
9 children. He's a predator. No different than a predator
10 in the woods. And this guy needs to be put away as long
11 as possible.

12 Thank you, judge.

13 THE COURT: Thank you, Mr. Kaiser.

14 MS. KOMATIREDDY: Your Honor, next I would like
15 to put the Pecas together, if that is all right with the
16 court.

17 THE COURT: Yes. That's fine.

18 Good afternoon, Mr. and Mrs. Peca.

19 MR. PECA: Good afternoon, judge.

20 I would like to start by echoing the sentiments
21 of the two gentlemen previous, in thanking you for your
22 professionalism and patience through this entire process.

23 You know, what strikes me initially is to see
24 two strong men, and how hard this is to do. Don't tell me
25 financial crimes don't leave a scar. An emotional scar.

1 And the reason it is hard is because we know things with
2 Phil Kenner go deeper than just financial crimes.

3 What he did has left a ripple in all our
4 families for generations to come. He is sick.

5 To speak more about this stuff, I am going to
6 allow my wife, Kristin, to speak.

7 MRS. KRISTIN PECA: I would like to start by
8 thanking the jury, even though they are not here, for
9 their focus and commitment during the long and arduous
10 trial.

11 I also want to thank the prosecutors for their
12 hard work.

13 And a special thanks to FBI agent Matt Galimoto
14 for his determination and commitment.

15 Also, thank you to the many other people who
16 worked tirelessly on this case.

17 And of course, thank you, Judge Bianco, for all
18 of your hard work and for seeing this case through to the
19 end.

20 Please forgive me if I go a bit long here but
21 this case -- Kenner's actions -- has affected me and my
22 family tremendously, and I want to try my best to properly
23 explain just how difficult and painful all of this has
24 been.

25 As we know, Phil Kenner has been convicted of

1 multiple fraud-related crimes; however, his repeated
2 forgery, perjury, and his harassment of victims in an
3 attempt to obstruct justice needs to be noted and taken
4 into consideration as well.

5 Kenner's numerous crimes were carefully planned
6 out and committed over several years and involved tens of
7 millions of dollars and dozens of victims.

8 So what do Kenner's crimes mean to me and to my
9 family? Well, to begin with, Phil Kenner stole money from
10 us. A lot of money. A majority of the money my husband
11 had earned from his playing career: the largest earning
12 years he will ever have.

13 Phil Kenner lied to us on numerous occasions,
14 took advantage of our trust and relationship, looted our
15 retirement and safety net, purposely misled us on
16 investments, stole our money for his own use and benefit,
17 forged Michael's name on financial documents, lied to get
18 us into a bad real estate investment in order to bail
19 himself and Constantine out before they lost their
20 deposit, and used a line of credit of ours, that was
21 supposed to be used for construction of a Hawaii project,
22 as his own personal piggy bank.

23 There were many instances of Kenner's fraud and
24 theft. It was clearly not just a one-time thing. It took
25 lots of planning, manipulation, and deception over several

1 years. There were other schemes and frauds that weren't
2 even a part of the trial, such as Los Frailes and The
3 Palms. And, after stealing millions of dollars from us,
4 Kenner had the audacity to continue to act as our
5 financial advisor while blaming others for the "stolen
6 money."

7 Kenner's defense emphasized that my husband,
8 Michael, made a lot of money in his NHL career, which he
9 did. However, like I said, his biggest earning years are
10 now behind him. He will never make that kind of money
11 again. And a majority of it was stolen by Kenner.

12 My husband spent his entire life -- since he was
13 two years old -- honing his craft, tirelessly training and
14 working hard to get to the point where he could play in
15 the NHL and earn that money. It doesn't matter how much
16 money someone makes or made. Having a majority of it
17 stolen by someone you hired to protect and grow your money
18 is egregious, no matter how much you earned.

19 Kenner stole our retirement money. He stole our
20 kids' college funds. He stole the money we had planned on
21 passing on to our kids and grandkids. He stole our
22 financial legacy.

23 I want to share a quick back story on why it's
24 especially heartbreaking to have had so much money stolen
25 from Michael.

1 His father was an Italian immigrant who didn't
2 have a college or even high school education but worked
3 hard by taking any job he could, from drywall installation
4 to deliveryman, to make ends meet.

5 Michael's mother would babysit children at their
6 apartment while his dad was at work. His family didn't
7 have much money and moved every time the rent was raised.
8 Michael recalls moving at least eight times while he was a
9 kid. From a young age, Michael knew he wanted to play in
10 the NHL. He worked very hard to achieve his goal. In
11 fact, his father told me a story I'll never forget.

12 While Michael's teammates and other hockey
13 players were working out with their trainers -- something
14 he couldn't afford to do -- Michael would walk to the
15 local public school, tie a rope around his waist, attach
16 it to an old tire, and run laps around the track to get
17 his legs stronger. It was that kind of determination and
18 dedication that helped him make his dream a reality.

19 Michael worked that hard, since he was a young
20 boy, to make it to the NHL. He put countless hours in, a
21 lot of work into becoming a professional athlete.

22 Furthermore, once he made it to the NHL, Michael
23 sacrificed his body over and over and is still feeling the
24 consequences today. He has had many surgeries, broken
25 bones, torn joints and ligaments. He suffered several

1 concussions. He has multiple plates and screws in his
2 leg. He had to get his face reconstructed with seven metal
3 plates, where he shattered his entire left side.

4 He lost multiple teeth, had his bottom lip torn
5 off, and as a result, had many oral surgeries.

6 His one ear was also almost completely torn off
7 as well.

8 Michael still feels the effects of his injuries
9 today. Some days he can't lift his arm over his head.
10 Some days the pain from the bone growing over the screws
11 and plates in his leg is unbearable. He broke many toes
12 blocking shots, and the resulting arthritis hurts him
13 tremendously. In fact, he just had surgery a couple of
14 months ago on one of his toes. And he still faces
15 multiple surgeries to get hardware removed and to complete
16 his oral surgery work.

17 What I am emphasizing here is that, while
18 Michael did make a lot of money during his NHL career --
19 as the defense felt the need to point out -- he earned
20 that money. Many times over, in my opinion.

21 And I need to mention that our kids sacrificed
22 in their own ways, too. They had to move to different
23 cities many times, each time having to adjust to new
24 schools, new teammates, make new friends, leave old ones
25 behind. At one point our son had been in seven different

1 schools in seven years. That's not easy on any kid.

2 And personally, I often had to shoulder the
3 burden of planning and arranging our last-minute moves,
4 packing and unpacking, quickly finding a home to live in,
5 while registering the kids in new schools and finding new
6 sports teams for them to play on, raising our kids far
7 from the help and support of family and friends: All so
8 Michael could focus on training and his playing career.

9 Basically, I am mentioning this to show how our
10 whole family made sacrifices in our own ways to support
11 Michael's career.

12 And Michael and I wanted the money he worked so
13 hard for to be passed on to our kids. The money that
14 Kenner stole was supposed to go to our kids' college
15 funds, their inheritance; not to line Kenner's pockets,
16 fund his extravagant lifestyle, and to keep his Ponzi
17 schemes going.

18 Having said that, it wasn't just a monetary loss
19 that we experienced. There has been a lot of pain and
20 suffering. It is hard to accurately describe, but I will
21 try my best.

22 What brings Kenner's crimes to a whole new level
23 and takes it beyond the "white-collar" description -- as
24 if what he did wasn't egregious enough -- is the way he
25 harassed us and other victims repeatedly. And it wasn't

1 just threats, although there were plenty of those.

2 This is hard to revisit, but I had strange men
3 calling and scaring me when Michael would travel. I
4 received anonymous threatening calls from Mexico, where
5 Kenner spent a lot of time. Calls from men threatening to
6 kill our pets; telling me I'm being watched; that he knew
7 Michael was out of town and I was home alone with the
8 kids; that I'd better be careful.

9 I turned a recording over, of one of the
10 threatening voicemails, to the FBI. I was made very aware
11 that I was literally being watched. It felt like I was
12 living a nightmare. For a while, I lived with the
13 curtains drawn and often wouldn't let the kids play
14 outside when Michael traveled.

15 We would literally hole up in the house to stay
16 safe. I called my father or brother to come stay with me,
17 at times. I had a deep, genuine fear knowing that the
18 threats were credible because the pattern of Kenner's
19 behavior towards people he deemed his adversaries was
20 deeply disturbing. They had been physically attacked, had
21 houses broken into, cars and clothing set on fire, and
22 pets were killed.

23 Furthermore, my husband received death threats.
24 Never before had either of us ever experienced any death
25 threats. And having your life seriously threatened

1 affects how you live. It affects you emotionally,
2 mentally, physically. The toll it takes is very real,
3 severe, and lasting.

4 One night, a drive-by death threat was yelled
5 out to us, at our home. We were specifically told Michael
6 would be killed the next day.

7 I called the cops. Filed a report. I started
8 sleeping with a knife on my nightstand. Michael had a
9 baseball bat by his. Needless to say, I was not sleeping
10 well at all and ended up needing the assistance of a sleep
11 specialist for the chronic insomnia that I developed, as
12 well as a therapist for the severe anxiety that was
13 brought on.

14 I was constantly worrying. I was worn out, run
15 down, mentally and physically exhausted, scared and
16 worried. And this lasted for the better part of a decade.

17 And it didn't end there. Kenner's witness
18 tampering and harassment rose to the level of contacting
19 the IRS through an anonymous letter that contained false
20 and misleading information about us. And because he was
21 our former financial advisor, Kenner knew enough facts
22 about our situation that he was able to make the claim
23 seem real, like we were tax cheats. And he succeeded.
24 The IRS put us through a full 4-year-long audit.

25 Everyone knows how stressful it is to deal with

1 the IRS. Try dealing with them when they were given false
2 information and think you are guilty of tax crimes. We
3 spent countless hours, days, weeks, months, and eventually
4 years fighting this claim. We had to hire accountants and
5 lawyers. We had to spend a lot of money just to prove our
6 innocence. We will never get that money or valuable time
7 back. Too many days were spent stressed out, emotionally
8 drained because of this audit.

9 Eventually, we not only proved our innocence;
10 the IRS ended up owing us money in the end. Kenner and
11 his defense said it was his "civic duty" to report us to
12 the IRS; yet, he couldn't even put his name on the letter;
13 left it anonymous.

14 At the time, our accountants knew there must've
15 been a reason the IRS was so aggressive, persistent, and
16 unreasonable. Then they found out the audit was triggered
17 by an anonymous letter. And thankfully, that letter was
18 later found on Kenner's laptop to validate our suspicions
19 and prove that he was harassing us and obstructing
20 justice.

21 As far as Kenner's "civic duty" defense. Last
22 time I checked, civic duty means a duty, obligation, or
23 responsibility. Nowhere in there does it say harass
24 innocent people, who happen to be witnesses and victims of
25 your criminal behavior, by anonymously providing false

1 information about them to the IRS with the hope that they
2 will deal with a lengthy, costly, and stressful audit.

3 The IRS letter is just another example of
4 Kenner's intimidation of witnesses. He will stop at
5 nothing to get away with his crimes.

6 Even more troubling is that the harassment
7 didn't stop once Kenner was in jail. The website Kenner
8 created from his jail cell -- yet claimed his son was the
9 author -- defamed and further harassed us and others by
10 revealing personal information such as Social Security
11 numbers, addresses, and private phone numbers, to detail
12 patently false information about the victims and spreading
13 vicious untruths designed to cause harm and humiliation.

14 One such example is how Kenner stated that my
15 husband had cheated on me in his presence, which never
16 happened. This malicious act was clearly done to cause
17 marital stress, humiliation, and to harm the reputation of
18 my husband. Again, this website, Kenner claimed, was put
19 together by his teenage son while he sat in jail.

20 If Kenner is capable of this kind of egregious
21 behavior while still awaiting the trial and sentencing,
22 imagine what he's capable of after he's been sentenced.

23 It should also be noted that an enormous amount
24 of time was taken from Michael and me during this whole
25 process. Time that we'll never get back. Time that was

1 spent on trying to figure out Kenner's complicated crimes.
2 Time wasted on lawsuits that Kenner had us involved in.
3 Time spent on investigations, hearings, trying to recoup
4 our money. Time dealing with the negative physical and
5 emotional side effects. Time preparing for this case.
6 Time that should have been spent as a family, with our
7 kids.

8 Our kids missed out on valuable time with us.
9 And they shouldn't have had to witness their parents
10 dealing with the stressful effects of this situation.
11 They shouldn't have had to feel the stress and gravity of
12 the situation we were faced with. That took away from
13 their childhood. They grew up with their mom and dad
14 dealing with this crap for years.

15 There was fear. For years I had to live in fear
16 due to the financial uncertainty created by Kenner's
17 crimes and due to the serious threats and harassment we
18 received. I was afraid for our lives. For our kids'
19 lives. I was afraid whenever Michael traveled. I was
20 afraid to answer the door. To answer the phone. I was
21 afraid I was always being watched. I was afraid to let
22 the kids go outside to play. I was afraid of the IRS and
23 the lengthy audit that Kenner started.

24 And we lived with the fear and stress of not
25 knowing what would happen next. We unknowingly and

1 unwillingly passed our fear and stress onto our kids. And
2 that, itself, brings tremendous pain to this day.

3 Lastly, the public humiliation of this needs to
4 be mentioned. Professional athletes are proud, by nature.
5 And to have this stressful and painful situation in the
6 local and national press created a lot of additional
7 anguish and stress for us. People often ask us about it.
8 And talk about it. It's hard to escape it.

9 Phil Kenner deserves a long sentence for many
10 reasons. He clearly has no regard for others and their
11 sacrifices, their families, their savings. His criminal
12 actions affected many families' financial structure for
13 generations to come.

14 His schemes were well thought out and executed
15 over years. This wasn't a one-time crime.

16 And keep in mind, Kenner committed these crimes
17 while presenting himself as both financial advisor and
18 friend. And then he tried to avoid prosecution and a
19 conviction by engaging in relentless harassment against us
20 and other victims.

21 Kenner has no empathy. He has zero remorse. In
22 fact, he's still denying he did anything wrong, and
23 remarkably continues to blame others. Kenner is
24 completely indifferent. Dishonest to the core. He is a
25 criminal. A career con man. He lacks a sense of moral

1 responsibility and a social conscience.

2 He can be charming, but he lies and cheats with
3 incredible ease and comfort. He is never wrong, according
4 to him, is manipulative, plays the victim, has a distinct
5 lack of conscience, a disregard for the law.

6 And, yes, those are the traits of a sociopath.
7 Sociopaths are gifted at leaving others holding the bag
8 while they run away with the profits of someone else's
9 labor. Sociopaths, always cunning, have an avid knowledge
10 of police, court, and tax law. They con others for
11 personal profit and pleasure.

12 And while it is common knowledge that sociopaths
13 don't and can't change, a prominent psychiatrist offered a
14 different view. A sociopath does change in one way: he
15 changes his target.

16 If let out, Kenner will continue to con, scheme,
17 and steal. He will find new targets. He will continue to
18 threaten and harass.

19 I stand here before the court today to represent
20 not only myself, but my husband, Michael, and our
21 children, Trevor and Emily.

22 I am also here on behalf of those who were too
23 nervous to speak. I'm representing those victims who were
24 too afraid to speak due to the harassment that other
25 victims had endured.

1 And I'm representing those who were so
2 devastated by Kenner's crimes that they chose to pick up
3 the pieces, rebuild, and move on: Not an easy task,
4 especially for those victims who had to file for
5 bankruptcy due to Kenner's crimes.

6 I am also here to represent those who did not
7 have the emotional strength to show up. Not just the
8 hockey players, but the victims that come from all walks
9 of life who had most, if not all, of their life savings
10 stolen from them.

11 I am here for the future victims: The children
12 who will never receive the money that should have been for
13 their college educations; the money that was supposed to
14 be passed on to them; the grandchildren and the
15 generations to come that have been affected.

16 I'm here today to represent all of the victims.
17 And lastly, I'm here because it is my civic duty.

18 On behalf of my husband and our kids, thank you,
19 Judge Bianco. I hope you will take our hardships into
20 consideration for sentencing.

21 A sociopath is the worst kind of criminal, as
22 they will never change.

23 MR. PECA: Judge, I would just like to end on
24 this.

25 As you know, he is a sick individual. His

1 sickness is evil. And as you've seen in your courtroom
2 over the years, evil has no cure.

3 Thank you.

4 THE COURT: Thank you very much, Mr. and Mrs.
5 Peca.

6 Is there anyone else who is going to speak?

7 MS. KOMATIREDDY: That completes the victim
8 statements, your Honor.

9 THE COURT: All right. Let me just speak to you
10 as a group.

11 And also I will say, as Mrs. Peca noted, even
12 though there are other victims who are not here today, I
13 am speaking to them, as well.

14 I want to thank all of you for being here today.
15 It is very important that you are here. It takes a lot of
16 courage to be here. It takes a lot of courage to speak.
17 And I appreciate you coming.

18 I do want to apologize for the delay in the
19 sentencing. You testified many, many years ago. It has
20 been a long time. The practice usually is for the
21 sentencing to take place six months or so after the trial.
22 And I know the toll. Reference was made to how much time
23 has passed, and I fully recognize that. And I do
24 apologize for the amount of time that has gone by.

25 I think, as you know, is not as if we were doing

1 nothing. After the trial, we had a very complicated
2 forfeiture proceeding relative to the forfeiture of a
3 resort in Mexico, which I think was unprecedented. That
4 was very complicated, so it took an enormous amount of
5 time, years actually, to have the hearing and then to work
6 through the various weighty issues.

7 My hope is that the government, through that
8 forfeiture and another forfeiture, the government does
9 have the discretion to utilize those funds for purposes of
10 restitution for the victims, and so I hope that you will
11 see at least some of the money that you lost, through the
12 forfeiture and through the restitution that I intend to
13 impose.

14 Also, Mr. Kenner is now representing himself.
15 And Mr. Constantine got a new lawyer. The lawyer had to
16 become familiar with the case. There were a lot of
17 post-motions for ineffective assistance of counsel.

18 So I am just explaining to you that I cannot
19 tell you how many motions we had and how many decisions I
20 had to make over that period of time. And that was on top
21 of everything else.

22 But I appreciate your patience and I apologize
23 for that delay.

24 Even though I heard your trial testimony and the
25 jury heard your trial testimony and believed your trial

1 testimony, all of it was credible, including your
2 testimony here as well.

3 It is important that you all are here today
4 because, as you know, under the rules of evidence, the
5 jury does not get to hear the impact of the crime. They
6 get to hear the facts. This is the time when we get to
7 hear the impact of the crime.

8 And it is important for the public to hear that,
9 for me to hear that before I sentence somebody, and it is
10 important that Mr. Kenner hears that.

11 I agree that I don't think he has any remorse.
12 I have not seen any remorse in the seven years that he has
13 been before me. I don't know what he is going to say
14 today. I am not expecting to hear any remorse. I don't
15 think he has any empathy or remorse. I am not just saying
16 that. It is important that he hears it.

17 And I do understand. Unfortunately, I have
18 presided over many fraud cases and I do understand not
19 just the economic toll but, as many spoke so powerfully
20 and eloquently about the psychological, the emotional toll
21 that it has, when someone who is your friend, who you
22 trust with your money, betrays you and takes that money.

23 And it is not just the money that is lost --
24 which is obviously important, and it is hard-earned
25 money -- but it is the psychological impact of having been

1 victimized in that way after trusting somebody and then,
2 for many years after that, living with that and the
3 ramifications of that.

4 I know it is an ongoing thing and you all still
5 feel it. You are all together here and you all still feel
6 the scar. It is an emotional scar that will always be
7 there.

8 I do want to also emphasize that Mrs. Peca
9 provided a lot of details as to the sort of ongoing
10 harassment that she and her husband experienced.

11 I have seen harassment in the papers. I'm sure
12 you have read many of the papers Mr. Kenner has submitted
13 to the court, and for years after the trial he has done
14 nothing but attack the credibility of all of you in an
15 unbelievable way.

16 I don't think I've ever seen, in my 13 years as
17 a judge, for someone to go after the victims in every
18 single way that he can. I have never seen that before.
19 He stops at nothing to try to tear down every one of you
20 personally and attack your credibility, and to me that is
21 ongoing victimization as well. He has done nothing but
22 try to tear down every one of you personally; not just
23 your reputation, but even emotionally and psychologically.
24 To have someone not only taking your money but attacking
25 you in that way, I think obviously makes it even worse.

1 So you can rest assured that I am considering
2 all of those things as I sentence Mr. Kenner today.
3 Obviously, I will balance all the factors under the law,
4 which I am prepared to do. But you can rest assured that
5 this sentence will reflect the harm that he has done to
6 all of you, and the other victims who you speak for today
7 by your presence, and by speaking, as well. The economic
8 harm, the psychological harm, and the ongoing nature of
9 that for many years to come.

10 I did want to emphasize -- and, Mrs. Peca, I
11 believe you made reference to this, about other
12 transactions and details in the affidavits of loss.

13 I just want to emphasize, I didn't know this
14 before, but I think it is important to understand. There
15 were many transactions that you were involved in with Mr.
16 Kenner that were not part of the trial. I have told him I
17 am not sentencing him on those because I did not hear the
18 evidence on that and so that is not something I can
19 consider in this sentence. I don't know what happened in
20 those transactions, so it would be inappropriate for me to
21 consider.

22 And for the same reasons, in terms of the
23 restitution, that is not something that I can impose
24 restitution on, not knowing what the facts are.
25 Obviously, you can pursue those things civilly. And I

1 know that may seem unsatisfactory to you, but that is the
2 way the criminal process works. I can only sentence the
3 defendant on what he was convicted of, or if I hear
4 testimony that I find to be credible, I can consider it at
5 sentencing. A lot of these transactions were not the
6 subject of testimony at the trial. So I want to make sure
7 that you understand that.

8 Obviously, we are going to set another date for
9 restitution and you are all free to come back, if you
10 want. But whether you are here or not, I want you to
11 understand I will be fully considering all your requests
12 for restitution because I know how important that is.

13 In sum, again I just want to express my deepest
14 gratitude for your being here today. I found both of your
15 statements very powerful in their own way, from your own
16 perspectives that you brought to bear today.

17 So thank you for coming and thank you for your
18 words.

19 I will hear from Mr. Kenner.

20 Mr. Kenner, before you start, I just want to
21 remind you that obviously you have submitted hundreds and
22 hundreds of pages to the court and I don't want you to
23 rehash everything that is in those papers. This is your
24 opportunity to highlight whatever it is you want to
25 highlight in connection with sentence.

1 We are not retrying your case. You are being
2 sentenced today. So I'm going to give you sufficient time
3 to do that but I am hoping that you are not going to try
4 to go through the whole trial again with me. All right?
5 So I don't want you to waste your time relitigating.

6 How much time do you think you are going to be
7 speaking for?

8 THE DEFENDANT: 25 minutes.

9 THE COURT: Okay.

10 THE DEFENDANT: I'm just guessing, your Honor.

11 THE COURT: Okay. That is more than reasonable.
12 Go ahead.

13 THE DEFENDANT: Your Honor, I'm very moved by
14 your statement you just made to the people who spoke
15 today. And whether I agree with some of their
16 recollection of the facts or not, or if all of this
17 evidence agrees with them or not, I'm not here to retry
18 the case today. So I apologize for that, if you thought
19 that was the case.

20 This has been an incredible winding road. I am
21 hurt by the statement that you don't find any remorse in
22 what I did, what the jury found me guilty of.

23 THE COURT: You can point me to anything that
24 you submitted in seven years to indicate remorse. I'm
25 happy to look at it because I've been looking for it.

1 THE DEFENDANT: Your Honor, I appreciate that
2 statement. And I probably deserve that statement.

3 What I can tell your Honor is that, through the
4 millions and millions of documents that you have seen,
5 whether they showed up on the eve of trial or during
6 trial, everything that I have put forth has never relied
7 on the he-said she-said testimony. I'm sure your Honor
8 knows that.

9 But moreover, when I make a statement like I
10 just did, generically speaking, that Mr. Kaiser was repaid
11 100 percent of his money that he borrowed from his mom and
12 his friends and family in Hawaii, and he refuted that,
13 claiming it is back pay and expenses, I'm relying on the
14 fact that Mr. Kaiser signed a document in July of 2006
15 that confirms he was repaid his entire \$1.176 million.
16 That is not my words.

17 So if your Honor could, at least just for the
18 moment, just understand that anything I have put forth is
19 based on empirical evidence that the government had in
20 their possession and turned over to me.

21 So, much the same, the government stated they
22 believed I was -- went improperly after Mr. Jowdy for the
23 funds that were stolen from us in our Hawaii investment.

24 Those were investments. Those loans of Mr.
25 Jowdy were fully vetted by Mr. Kaiser long before, for a

1 year before we decided to make that loan. Mr. Kaiser told
2 the FBI that. It is in the FBI notes. I didn't make that
3 story up. I figured 20 years he would be the perfect guy
4 to sit down face-to-face with Mr. Jody. And he explained
5 that to Mr. Galimoto, that he did it six times before we
6 made the initial loan to Mr. Jowdy.

7 Mr. Kaiser became the managing member of that
8 corporation shortly thereafter, and again, still had no
9 problem with it. Participated in multiple lawsuits in
10 America and in Mexico to recover those loans.

11 I will get to a few of those items in a moment.
12 But again, I am not trying to retry the case. Please
13 don't take it as that. I hope, your Honor has seen at
14 some point, in whatever advocacy I have for the facts as I
15 see them or as I read them, those facts are based in
16 evidence that the government had in possession and
17 transactions that Mr. Kaiser, Mr. Berard, Mr. and Mrs.
18 Peca participated in real time, through text messages,
19 emails, signed disclosures, signed documents, signed
20 authorizations.

21 I would dispute the amount of money that ever
22 passed through my management or my hands. And it is not a
23 he-said she-said. This is a white-collar case and there
24 is money traceable. Every penny of it is traceable in all
25 of these documents.

1 I do appreciate them coming in today and
2 expressing how they feel. It does move me. But there are
3 some items that temporally just don't add up.

4 Mr. Berard made a lot of money in his career, as
5 did Mr. Peca, and they earned every dollar of that. And
6 they hurt every day because of it. And when we found out
7 that we had an investment partner that was introduced to
8 us by another, other hockey players and Mr. Jowdy, when we
9 found out in 2006 that he had been robbing us, we went
10 after him with the same vigor that I think you have seen
11 in some of my submissions. And again, at that point in
12 time everybody was in the know through group
13 communications and conference calls and emails. And I
14 will get to those in a moment.

15 But Mr. Berard mentioned a submission to the
16 Rhode Island DEA. That was after I was arrested. The
17 only money I ever managed for Mr. Berard was \$650,000 he
18 had in the Hawaii project. There was no other money out
19 of the tens of millions Mr. Berard made. That was the
20 only money that was ever under my direct management.
21 Everything else were his own decisions, and he had his own
22 investment advisors.

23 Mrs. Kaiser. I feel terrible for her. She told
24 us that Mr. Kaiser paid her back, as he addressed. But
25 his mom's money was solicited by Mr. Kaiser and paid back

1 to her eight months, nine months later at the Hawaii joint
2 venture closing. The bank transactions show that. That's
3 not my work.

4 Mr. Kaiser said we did a project in California.
5 Again, Mr. Kaiser said he was never paid back that money
6 in California. There's years of bank records that confirm
7 every dollar was paid back to Mr. Kaiser, and then some,
8 in addition to the \$1.7 million he was repaid.

9 Mr. Kaiser said at the trial that I used his
10 money to buy stock with Mr. Constantine and give it to
11 him. That would put him over the \$1.7 million.

12 That I bought my home in Mexico with his money.
13 Never happened. It's untrue. Those funds come from a
14 completely different source. There is bank records that
15 prove all that.

16 Again, in view of what went on the last number
17 of years, I just find a hard time swallowing when they
18 just don't accept. All the information that went up on
19 that website was all stuff the government produced and was
20 found on PACER, as far as I'm aware. And so there was
21 nothing I produced that the government hadn't already
22 produced in their own forum.

23 I think Kaiser said I triggered an IRS audit
24 from jail? I'm not sure how I triggered an IRS audit of
25 anybody from jail. And maybe that was with the Pecos

1 also?

2 When I was in jail, Mr. Kaiser said that I sent
3 three thugs to his place in Cabo San Lucas. I'm in
4 detention. I don't even know how that happened. I read
5 about it in the newspaper the first time.

6 The Pecas. I feel terrible that they believe
7 that there were wasted efforts on lawsuits to recover
8 money that they believe I stole. What we do know is, Mr.
9 Peca gave tremendous testimony to a Southern District
10 Grand Jury in secrecy, and when he gave that testimony, he
11 confirmed that every dollar he invested in the Hawaii
12 project, that he signed off on, that those monies went to
13 where he expected them to go, to Mr. Jowdy.

14 And when Mr. Jowdy didn't pay his taxes, we sued
15 for those. That's what we were supposed to do, use the
16 jurisprudence system to go after those who received the
17 money. I didn't receive any of those monies. None of it
18 is traceable to me. I did not benefit from those monies.
19 And my investment dollars are alongside each of theirs.

20 So I don't know how any of the lawsuits were
21 wasted. We went after, Mr. Peca signed off on them with
22 independent lawyers.

23 I don't know if the government had told the
24 Pecas, but Mr. Jowdy admitted to all the money he stole.
25 He admitted it to the FBI in March of 2010. It is in the

1 FBI notes. And I've read them. It's not my words.

2 None of those funds come to me. Nor does Mr
3 Jowdy tell the FBI that I have any of that money.

4 Mr. Kaiser even explained that to the court in
5 his letter in February 19. He says Mr. Jowdy still wants
6 the court to believe I stole their money. None of the
7 money came to me.

8 Mr. Jowdy would just put the money up and show
9 me. The government hadn't shown us. Nobody showed that I
10 had stolen anybody's money. I was the administer (sic) of
11 the Hawaii project. Those are funds that were under my
12 control as a manager. We followed the operating
13 agreements that were signed off by everybody.

14 The transactions took place and we got caught up
15 with some really bad people. You know, your Honor, I know
16 that they have given statements about people threatening
17 them at their homes. I was in jail when they are talking
18 about the events happening. None of these events happened
19 due to my interaction. I was in federal custody during
20 the time of all this.

21 The Pecas' audit, IRS audit. I remember them
22 announcing it in the courtroom to you, your Honor, in
23 2014. I was in federal custody when that audit took
24 place. The anonymous letter somehow was on my laptop?
25 I've never seen that anonymous letter. It's never been

1 shown to me. I didn't see it in any discovery. And I've
2 parsed as much, millions of documents as possible. But
3 it's an anonymous letter, not signed by me, to trigger
4 audits?

5 I mean, I don't want to get into the weeds, but
6 these are all the exact same things that Mr. Jowdy was
7 doing to me and everybody else when we were going after
8 him to create side shows.

9 Now, I don't know if it's appropriate, your
10 Honor, and I have been here seven years, and that's not a
11 bearing on anything other than what I am about to tell
12 you. I haven't seen my children in seven years. It's not
13 been financially feasible for them to come here and visit,
14 nor is the environment at MDC conducive, based on
15 everything I know your Honor has read about in the
16 newspapers starting as far back as 10 years ago.

17 And my fiancé, I haven't been able to see her in
18 4 years because of her severe liver condition while she's
19 waiting on the liver donor list. She is two years past
20 her life expectancy.

21 I've brought some pictures for your Honor, if
22 you care to see them, what my children looked like the
23 last time I saw them, to what two adult children look like
24 right now, and what my fiancé looks like who has suffered
25 right alongside with whatever context this entire process

1 has been.

2 But it tears my heart to hear that anybody feels
3 they have been victimized by what has gone on. I have
4 been told by several defense attorneys that there is a
5 real thin line between espousing your innocence based on
6 empirical evidence and accepting responsibility for
7 something that the transactions they described just didn't
8 happen. Again, it's not he-said she-said. These are the
9 paper works (sic) that show all of this stuff.

10 Perhaps I can just read a couple of items. I
11 certainly brought a lot that I was thinking about talking
12 about today. I don't want to waste the court's time. I
13 know we've been here seven years working through this.
14 But your Honor had made a handful of very astute
15 observations back when we were going through pretrial, one
16 of which was, you know, you asked wouldn't it be important
17 to see all the authorizations that people have signed to
18 give access to all the transactions that actually took
19 place.

20 As I did some of my research, I see back nearly
21 a century-and-a-half ago, in a case called *Austin v*
22 *Tripplecock*, the Supreme Court ruled that basically, your
23 Honor, if you sign a document, you own it. And that case
24 has been referenced most recently, in the last 10 years,
25 by the Circuit. Every transaction that took place was

1 signed off by these gentlemen -- I should say at least Mr.
2 Berard and Mr. Peca -- that were under my control. And we
3 followed the letter of every corporate document. We
4 followed the letter.

5 I believe it is 91 US 50, your Honor. I can get
6 that for you. I apologize. But in the context of that,
7 your Honor asked shouldn't we see all the authorizations
8 that have been signed?

9 And the government, frankly, bought you that
10 day. I believe it was you. I don't believe it was a
11 magistrate on the bench that day. Talking about
12 subpoenaing the records from the Northern Trust Bank
13 months and months before trial.

14 And the government convinced the court that it
15 was a fishing expedition to find all the authorizations,
16 the line-of-credit statements, the signed extension of
17 credit, the signed distribution memos from these
18 individuals and the rest of them that invested with us.

19 Those statements did not show up until 10 weeks
20 later, after the government, on the eve of trial, had
21 agreed to a pared-down subpoena after they filed their
22 April 22 superseding indictment. It clearly showed,
23 according to *Upton v Tripplecock*, that they signed off on
24 every transaction that took place.

25 One of the things I do know, your Honor, is that

1 had we had those in the courtroom, it certainly would have
2 given your Honor a chance to take a look at those. And I
3 know that those have not been addressed or haven't been
4 viewed by the court, because they did not come out in the
5 proceedings other than Mr. Haley, on a weekday of the
6 trial, asked me if I had seen the documents and if I had
7 forged any of the names.

8 Well, that was the end of it. It was 12 years
9 of documents, 5 inches of documents, and that was his only
10 question on some of the most exculpatory items in the
11 case.

12 And I feel bad. But as soon as I whistle-blew
13 on Mr. Jowdy and Tom Harvey, who may even be in attendance
14 today, the first thing that happened is Mr. Harvey started
15 threatening me, Mr. Kaiser, Mr. Manfredi, and everybody
16 against Jowdy was willing to do jail time for calling the
17 money we gave him loans.

18 Mr. Jowdy admitted to them that they were loans,
19 to the FBI, just a year later, after we were being
20 threatened that we were going to go to jail at the hands
21 of the FBI, not to mention that Mr. Harvey's cocounsel to
22 Mr. Jowdy was a very powerful law enforcement officer, as
23 your Honor knows.

24 You know, I was arrested in Mexico two times
25 based on Jowdy's criminal allegations that I was calling

1 the money he took from us, and then admitted he took from
2 us. I was arrested. One time it was a fairly harmless
3 incident. The second time, I was almost beaten to death.
4 Our attorney in Mexico was shot in the back of the head
5 after getting out of that the second time in jail.

6 You know, Jowdy admitted all the loans, in a
7 California deposition. I think Mr. Kaiser was there. And
8 what he texted me during the deposition was kind of
9 unbelievable: Can we get the 50 million in small bills?
10 He knew right then and there. Mr. Jowdy admitted after
11 fighting us for two years.

12 The fact that the government still says that the
13 loans are fake is a bit surreal. But, you know, back in
14 2006 we had a forfeit attorney that worked with us on both
15 the Hawaii and the Mexico deals. The attorney had written
16 to the group of investors, which included Brandice Lister,
17 Brad Lukowich, Berard, Campbell, Simon, Boyle, Sydor,
18 Christich, Moreau, Murray, DeVries, Wooley, McKee, Letvin,
19 Glatt, Junos, Stumple, Meirick, Norstrom, Peca, Nolan,
20 Gonchar, Ruchin, Green, Stevenson, Nash, Sipilkov, Chris
21 Mandredi, John Kaiser, Chris Hawkins.

22 And the attorney had written:

23 *For those of you who are not aware, Ken Jowdy*
24 *and Bill Machin have informed us that Lehman Brothers*
25 *closing in Cabo was delayed another 30 days. They have*

1 *legal issues to handle in Mexico prior to their final*
2 *sign-off and funding.*

3 *We have been reassured that their delays are not*
4 *complications. We have been informed that part of the*
5 *closing costs was that Lehman Brothers rejected the*
6 *original proposals to repay the Hawaiian loans at the*
7 *closing by collateralizing 10 to 20 percent equity*
8 *received from managing the Cabo project.*

9 *We were also informed that Kenner would not be*
10 *accepted as a joint manager with Ken. Ken will be the*
11 *sole manager. We have received full assurances that*
12 *management will still receive our input.*

13 *It is complicated but has something to do with*
14 *the 2005 deal Phil and the Hawaiian management team*
15 *rejected in concert with my advice. These are meetings*
16 *John Kaiser had with Ken before we agreed to lend him the*
17 *money in 2004.*

18 *Phil has asked me again to attach to your*
19 *records a copy of the lending agreement. Please contact*
20 *me with any questions, but you should already have a copy*
21 *from previous communications.*

22 *Questions during our last conference call by*
23 *Owen Nolan, Mike Peca and Bryan Berard were important to*
24 *all of you. If you are still confused about the*
25 *individual equity you invested in the Cabo project versus*

1 *the Hawaii equity and loans, please reply to me.*

2 *I thought Phil clarified it by the agreements I*
3 *previously forwarded to you after every member signed*
4 *them. If not, please contact me about what you cannot*
5 *find in your personal records and I will forward them*
6 *again to you or your advisors.*

7 *Based on the delay, I have also re-sent the*
8 *updated loan calculations from the Hawaii loans to Jowdy*
9 *for your records. It has been given Lehman Brothers so he*
10 *is aware of the amount that's continuing to accrue to*
11 *Jowdy.*

12 *As a result of the phone call with Ken and Bill*
13 *about the delayed closing, they confirmed the 15 percent*
14 *was still accruing in spite of the delay. They were*
15 *confident that the initial real estate sales in Cabo, that*
16 *the first few would produce the funds needed to fully*
17 *repay their loans plus additional interest. I find*
18 *comfort in their representations.*

19 *The 15 percent is not a normal loan interest.*
20 *The extra accrued interest for the Hawaii project will*
21 *assist in defraying the development expenses Chris*
22 *Manfredi and Chris Hawkins and John Kaiser had explained*
23 *to you on previous conference calls.*

24 *Once we have received the development*
25 *authorizations based from the district in Hawaii, we will*

1 *have more funds available to begin the next phase. You*
2 *should recall the Centrum loan from 2005 could also be*
3 *extended upon request and verification when construction*
4 *and development funds are required.*

5 *Lehman Brothers has suggested that once they*
6 *complete the Cabo funding, they want to sit down with Phil*
7 *again and try to finance the entire project. They have*
8 *proposed a macro lending deal, not just a 5000 -- \$5*
9 *million acquisition loan that caused the 2005 issue*
10 *determination prior to the Tommy Constantine loan that*
11 *saved the oceanfront parcel in need of extension, which*
12 *Phil negotiated with Hawaii Senator Chumly.*

13 *We will determine Lehman Brothers' future*
14 *involvement in time, but Tommy has another developer that*
15 *he and Phil have been dealing with. They already made*
16 *their initial trip plans to Hawaii with land manager Chris*
17 *Hawkins, and that joint venture seems to have real*
18 *promise. They currently have successful developments in*
19 *Canada and the US so he may also be invested with them.*
20 *They have a number of NHL players as investment partners.*

21 *For those of you who are in Mexico, if there are*
22 *questions you want to discuss with Ken or Bill directly,*
23 *I'm sure they would welcome your calls about the delay*
24 *issues. While we are completing the Cabo funding, I*
25 *believe that Chris and John are working in Hawaii on*

1 *premises to begin construction on the Discovery Harbor lot*
2 *that the company bought in 2005.*

3 *As you will recall, these are the small lots*
4 *that can be used to test the material import timing and*
5 *problems from the mainland on a smaller scale*
6 *construction.*

7 *Our Carl Smith LLP attorney Steve Willen and his*
8 *staff have completed the initial registration work for the*
9 *501(c)(3) property that was split off from the 1500-acre*
10 *property based on remediation issues that came with the*
11 *10-acre lot adjacent to the highway.*

12 *If you are unaware of or have forgotten the*
13 *strategy of how we district to build the local museum on*
14 *the parcels and give back to the community, please contact*
15 *the people who are managing this strategy.*

16 *Months later he replies to another one. He says*
17 *to the investors in May of '07:*

18 *I'm sure you're all aware that Phil has been*
19 *traveling all around the US and Mexico to find Jowdy for a*
20 *face-to-face meeting for quite some time about his lack of*
21 *communication and nonpayment of the Hawaii loans.*

22 *Finally, Phil tracked him and Bill Machin down*
23 *in Cabo. Phil discussed the misrepresentation and*
24 *documentation issues referred to in our last conference*
25 *call, including the \$2.3 million capital account for CSL*

1 *properties, your investment LLC, as attached, and the \$5*
2 *million capital account for Baja Ventures 2015. That's an*
3 *LLP for Phil, Stumbel, and Wetman. And they all made*
4 *initial investments before Lehman agreed to fund.*

5 *Phil discussed the 40 percent Baja Ventures, 40*
6 *percent CSL, and 20 percent Jowdy Equities split getting*
7 *fixed that Jowdy changed for the closing but promised to*
8 *reallocate post-funding. There were other items.*

9 *But in summation, Jowdy and Machin had no*
10 *interest in discussing any changes we previously agreed to*
11 *in order to complete the March 2006 funding in Cabo under*
12 *duress. I think the pressure was created by Jowdy to hide*
13 *these frauds from us and close the deal with Bati. They*
14 *offered Phil bribes to keep quiet and not tell you, Phil's*
15 *investors, what they were doing and not doing with the*
16 *money, as Phil discovered with the bank records.*

17 *This also included their refusal to now address*
18 *the Hawaii loan repayments like they don't exist. For*
19 *those of you who know Bati in Cabo, Jowdy is doing the*
20 *same to him. I understand that Bati is going to sue Jowdy*
21 *and start his personal legal process. I've advised Phil*
22 *that we should run parallel to Bati's Mexico litigation*
23 *efforts for maximum impact if you are not seeing other*
24 *alternatives to resolve the crap Jowdy has created.*

25 *Phil met with Mexico legal counsel and is*

1 *prepared to sue both criminally and civilly for all of*
2 *you. I cannot project the results because this is*
3 *uncharted territory and so soon after the March 2000*
4 *closing that it all appears planned by Jowdy and Bati.*

5 *How many times have you seen that John Kaiser*
6 *had been hurt and still not pursue Jowdy? They think it*
7 *will destroy the value in Cabo, and Lehman will be*
8 *foreclosed on the property. They may be right. They want*
9 *to negotiate with Jowdy through Tommy. I do not agree.*
10 *But you must remember that Lehman has also funding on the*
11 *Hawaii project through Bati. They have not begun to*
12 *address the \$4 million milestones payments, as required.*

13 *You know, Phil gave up control in Hawaii for all*
14 *of you to receive your proportionate share of the \$7*
15 *million closing funds while Phil left his capital account*
16 *in the deal and signed over his home in Hawaii to the*
17 *project absent profits of nearly \$500,000. Time will*
18 *expose the Lehman banker and his development friend Alan*
19 *Worden.*

20 *Some of you should know that Phil has met legal*
21 *counsel in New York through Robert Thompson's contacts to*
22 *discuss a US strategy versus Jowdy and Lehman. Mr.*
23 *Thompson was President Carter's former legal attaché to*
24 *Congress.*

25 *You understand that with Louis Freeh and John*

1 *Behnke involved with Jowdy, this will require mega funding*
2 *and fortitude to take them on. For now we need to think*
3 *about Cabo and what's going on in Mexico. Freeh will have*
4 *less input there but Jowdy's project money and leverage*
5 *can buy a lot of protection.*

6 *Phil has offered to buy any or all of you out of*
7 *the contributions to CSL Properties. We do not know if*
8 *our Mexico legal efforts will be successful. And Phil*
9 *wants to make it clear that you can cash out now, if you*
10 *want. Just contact me and I will handle the paperwork*
11 *with you and your personal attorneys.*

12 *This is not how any of us planned the Cabo or*
13 *Hawaii deals to pan out, but when there is tremendous*
14 *money at stake, these are things that can only be*
15 *mitigated, not eliminated, through legal due diligence.*
16 *It does not stop bad people or criminals from doing*
17 *illegal things.*

18 *Send me a reply if you want to cash out or*
19 *discuss the details any further. I am always available to*
20 *your attorneys or other advisors for additional*
21 *discussions.*

22 *I need your permission by email to discuss the*
23 *details with them like I have before. We will take this*
24 *legal process one step at a time and navigate it as a*
25 *group.*

1 *Phil said he will not let them steal from us as*
2 *a group, but if he wants to cash out, we will make it*
3 *happen to alleviate the Cabo portion of the issues.*

4 *Sincerely, Ron.*

5 THE COURT: Mr. Kenner, you have been going for
6 25 minutes. I don't know if you have lost track of time,
7 but I am just giving you a warning that, you said you did
8 not want to go over and relitigate your trial, but it
9 looks like that is what you're going into.

10 I just want to remind you, I am sentencing you
11 today. This is your opportunity to tell me what I should
12 know. This has all been in front of me for years. I am
13 sentencing you today.

14 MR. KENNER: Yes, sir.

15 THE COURT: So I am going to give you 10 more
16 minutes. Tell me anything you want to tell me before I
17 sentence you. You want to continually read these
18 documents to me that I know, that you have put before me
19 for many years.

20 The jury found you guilty. You have made a
21 motion for a new trial. I have denied your motion for a
22 new trial. I am sentencing you based upon that verdict.

23 So if you want to continue to relitigate the
24 trial, you can do so for the next 10 minutes. I don't
25 want to cut you off without giving you an opportunity to

1 say whatever you want to say today on your own behalf.

2 MR. KENNER: I appreciate that.

3 I wanted you to see that there was complete
4 transparency in some of the major transactions related to
5 this, and none of these were brought out at trial, for a
6 myriad of reasons that I have addressed before and will
7 address again.

8 The opportunity for us to recapture funding on a
9 deal went terribly sideways and I couldn't feel any worse
10 for that. I worked for years and years, at my own
11 personal peril potentially, in Mexico to recover the
12 funds.

13 The transactions, Mr. Kaiser vetted them with
14 Mr. Jowdy ahead of time. The Centrum loan that you heard
15 about at trial, Mr. Manfredi and Mr. Jowdy arranged that.
16 And Mr. Manfredi vetted that transaction. It is all in
17 evidence. It's all in emails. And Mr. Jowdy, frankly,
18 took an adverse path to us once he got the funding from
19 Lehman Brothers and the protection he believed he needed.
20 I'm not sure what else one simple US citizen could have
21 done at that point in time other than continuing to fight
22 and fight.

23 You know, your honor had not heard from 25 of
24 the 30 investors in the Hawaii project. You know, those
25 are people who, frankly, had spoken with the FBI, because

1 they are all in the 3500 notes, told the FBI the things
2 that Mr. Peca told the Southern District, that he was 100
3 percent aware of every transaction, that he authorized and
4 signed off on them and he granted me authorization to
5 transact on behalf of his investment funds.

6 I know it has been said that some people could
7 not remember when they started them, started their
8 investment funds with the lines of credit. Mr. Murray
9 actually testified at trial he thought it happened five
10 years earlier than it actually did. But each of those
11 authorizations also have the individual investor's
12 handwriting on those documents. So not only did they sign
13 them from day one, but they also have their own
14 handwriting.

15 You know, your Honor, when I have looked at a
16 number of the cases -- and I'm going to move on to the
17 final thoughts. When I have looked at a significant
18 number of the cases, the case I find that matches the
19 transactions in this company -- excuse me, in this case,
20 closer than any other, is probably the Martin Shkreli
21 case.

22 And assuming that you accept all the facts that
23 the government put forth in the testimony of the jury and
24 the verdict -- the testimony of the witnesses and the
25 verdict of the jury, I'm not here to dispute that today,

1 your Honor. This is not the forum, as you eloquently
2 said. That forum is a different day, if it happens at
3 all.

4 But in the Martin Shkreli case, the dollar
5 amounts are in the same guidelines ranges. Mr. Shkreli
6 was involved with managing investment monies for different
7 individuals. He was found to have used, for his own
8 personal benefit, over \$10 million of investors' funds.

9 None of the funds in this case have come to me
10 other than the \$280,000 repayment of Mr. Gaarn and Mr.
11 Constantine, which I have discussed many times with the
12 court.

13 Mr. Shkreli was in a position of trust, managing
14 a number of hedge funds. Mr. Shkreli had control and
15 access to move funds to his own personal bank account, so
16 that \$10-plus million is exactly what he was found guilty
17 of at trial. The government was seeking 45 years through
18 sentencing guidelines to Mr. Shkreli. The same thing had
19 happened with Mr. Shkreli.

20 Judge Matsumoto, as I think you are aware,
21 sentenced him to 84 months in that case. I know at the
22 end he broke down and cried in the courtroom, as I was
23 told by some observers, for the monies that he personally
24 pocketed and put into his own bank account for his own
25 personal use.

1 This case is absent of any of those dollars.
2 You know, I've got thank-you letters from a handful of the
3 investors right while I'm still sitting in jail. TS
4 Nordstrom, who you have not heard from, but in 2014, while
5 I was still sitting in jail, he said:

6 *I'm truly sorry to hear about your situation. I*
7 *can't even imagine what it would be like to be where you*
8 *are and the situation you have been put in. It makes me*
9 *happy to hear that your spirits are high and that you are*
10 *pursuing the truth.*

11 *I know that you're doing everything in your*
12 *power to set everything straight. I admire your strength*
13 *to keep pushing forward.*

14 *I have very little information regarding Mexico.*
15 *I've talked to DeVries twice during the last few months.*
16 *And after he and Rem tried to take control over the*
17 *project and did not succeed doing so, I've talked to him*
18 *once and he is still trying to find a way for us to get*
19 *access to all the paperwork, if it exists, from Jowdy.*
20 *Don't look back. You're not going that way.*

21 *Your friend, Matias Nordstrom.*

22 Matias was involved every day just like Mr.
23 Berard and Mr. Kaiser were up until the moment that they
24 went to work for Mr. Jowdy.

25 There is a series of cases, If you would just

1 give me a moment to try to find them. I just wanted to
2 put them on the record and identify them for your Honor.

3 (There was a pause in the proceedings.)

4 MR. KENNER: If I can address, even before I
5 read those off.

6 You know, even my fiancé, when she was in the
7 hospital first in 2016, she was served with an arrest
8 warrant, summons and complaint for what had been
9 previously dismissed by mistake in Arizona as a noise
10 violation. And she wrote to me:

11 *Why me? I did everything right. How can they*
12 *bring up new charges after it was dismissed? I'm beside*
13 *myself. If they charge me, I get six years for something*
14 *I didn't do. How is this legal?*

15 At the hearing, when she went in, she had come
16 from ICU with the nurse, she had to go in and address this
17 rejiggered complaint to her 360 days later, and the judge
18 ordered the prosecutor to just try and straighten it out
19 because it seemed like there was a mistake.

20 And the prosecutor told her: You and PK f'd
21 with the wrong people. Get away from him. And it took
22 her six more months of traveling from ICU to get that
23 finally dismissed again.

24 I've been at MDC for the better part of seven
25 years, as your Honor knows. We have endured conditions

1 that are described by many judges in this district as
2 third-world conditions. And we had an eight-day blackout
3 without power during the polar vortex that came through
4 here a year ago. We had no power and no light, no warm
5 water, reduced food service, and we were locked in the
6 cells for eight straight days in single-digit and subzero
7 temperatures.

8 The prison tried to cover up what they were
9 doing to fix the problems, changing blankets, until the
10 eighth day, when they finally had auxiliary power to
11 repower everything. I mean, it was an incredible
12 situation. I never experienced anything like it.

13 I felt worse there than I did on my fourth day
14 in a Mexican jail, where I got, frankly, nearly beaten to
15 death.

16 As your Honor knows, we have been six months in
17 a strict COVID-19 lockdown at MDC. 69 of the 180 days, we
18 have been on a 24-hour lockdown. The other days we are
19 free 1.2 hours a day.

20 It took almost 2 months before they gave us
21 access to a computer for more than 15 minutes a day for
22 groups of 20 to get on 4 computers and 4 phones. So it
23 was terrible, to say the least.

24 As your Honor remembers, the government had me
25 thrown into the SHU at MDC for about three weeks for a

1 jump drive that the government had turned over. Your
2 Honor had, thankfully, ordered me out of the SHU, much to
3 MDC's chagrin. No only had they previously thrown away my
4 discovery hard drive, as your Honor knows, but they threw
5 away at that point almost all my paperwork and a couple of
6 hundred discs that the government had turned over at that
7 point in time.

8 The amazing part was that the jump drives that
9 they put me in the SHU for was in their possession. It
10 wasn't in my possession. All they did was allege that I
11 should have put it in their possession in my name, the
12 legal department.

13 One of my very good friends who worked for us in
14 Hawaii and Mexico had written to the court and said:

15 *Sir, my name is Christopher Hawkins. I am*
16 *writing about Phil Kenner.*

17 *I worked in Hawaii from 2004 to '06 for the*
18 *Little Isle 4 Company. I worked in Cabo from '06 to '08,*
19 *after we got the project funds from Lehman.*

20 *John Kaiser asked me to go there in 2006 so I*
21 *could watch my new boss Ken Jowdy. PK said it was a good*
22 *idea and John needed me to relay information to him about*
23 *the Cabo business because Ken owed us over \$7 million by*
24 *then.*

25 *I worked in Cabo until Ken's people threatened*

1 *me. I was caught telling PK about Ken's team plans to*
2 *hurt PK physically. They fired and threatened another*
3 *guy, named Matt, who was telling PK other bad stuff.*

4 *Ken said constantly that the FBI was protecting*
5 *him, and the Lehman people knew they would give him money*
6 *for anything he asked for. They wanted to set up PK on*
7 *Mexico drug and gun crimes. I know they did bad things to*
8 *PK in jail after I was gone from the fake gun charges in*
9 *Cabo.*

10 *Ken said they would not have to repay our Hawaii*
11 *group if they could blame PK after getting him arrested in*
12 *Mexico. That was their plan. Ken's lawyers said they*
13 *could take PK's ownership piece then without a fight.*

14 Your Honor, as I think you might know, Judge
15 Block had said:

16 *We now have an advisory guidelines regime for*
17 *any officer or director of virtually any public*
18 *corporation convicted of securities fraud confronted with*
19 *guidelines calculations either calling for or approaching*
20 *lifetime in prison.*

21 Now with respect to the conditions. The First
22 Step Act has changed the court's ability to review the
23 circumstances surrounding incarceration. And in the
24 Second Circuit, *United States v Zullo*, 19-3218-CR,
25 regarding compassionate relief, the court held that the

1 First Step Act permitted the court to consider any
2 potential extraordinary or appellate relief that a
3 defendant may raise for compassionate relief and vacated
4 any further proceeding. They have broad discretion to
5 consider any extraordinary and compelling need for relief
6 that a defendant might raise. It is no longer just for
7 old age and health concerns.

8 In the Northern District of Ohio, based on
9 COVID, a judge ruled that they violated inmates' Eighth
10 Amendment rights because of their neglect and reckless
11 response.

12 During COVID, one of our co-detainees was shot
13 and killed by officers. We had an eight-day lockdown
14 because a gun was brought into the facility and they shut
15 down the entire facility, military style.

16 There was, in Forbes magazine they recently
17 quoted from an author who wrote two books on mental
18 illness who said:

19 *Someone does not have to have diagnosed mental*
20 *illness before going to prison, according to Elizabeth*
21 *Kelly. It may well develop, during the pandemic, profound*
22 *anxiety and pressure, and later PTSD, caused by the trauma*
23 *associated with COVID conditions in federal prisons.*

24 The US Sentencing Commission studied the first
25 half in the initial year and reported that the average

1 length of sentence reduction was 68 months in 2018 and 84
2 months in 2019.

3 Mr. Shkreli's case was 18CR819, if you didn't
4 have that for your records, your Honor.

5 THE COURT: I sat on the appeal of the case on
6 the motion of Mr. Shkreli. I sat on the case on appeal.

7 MR. KENNER: Thank you, your honor.

8 Now, there is another case, Mr. McFarland, which
9 is another very high-profile case, where he had defrauded,
10 stolen \$24 million from concert goers, stranded 1000-plus
11 people in a foreign country, and he was sentenced to six
12 years in federal prison.

13 Mr. Billy Walters, who had defrauded investors
14 of \$25 million, went to trial, and after trial was given
15 60 months in prison.

16 There is a case in the Fifth Circuit by an
17 investment advisor, business manager who probably is also
18 very similar to me. His name is Charles Banks. And he
19 advised some professional basketball players. It was
20 determined that there was an actual loss of \$13.5 million
21 from loans that his investors said that they weren't aware
22 of what they were signing; although they admitted to
23 signing them but weren't aware.

24 He received a 20-level enhancement, much the
25 same as your Honor did for me. He had a position of trust

1 with each of these. He was sentenced to 48 months in
2 prison.

3 There is judge after judge after judge who spoke
4 out about the sentencing reductions and the qualifying
5 conditions in the Brooklyn jail, including Judge Pollock.

6 It has been seven years, your Honor, since I
7 have been in the sunshine. I have had no vitamin D from
8 the sun, which is important, as your Honor knows, to our
9 vital quality organs. We are not allowed to have any
10 Omega-3s for fish oil, which is very difficult on my own
11 CTE conditions.

12 In granting downward sentencing variances in a
13 series of cases after the blackout of a year ago, this is
14 pre-COVID, Judge Chen noted that inmates at the MDC were,
15 *"subjected to very cruel conditions,"* and that, *"there was*
16 *a reluctance on the part of the officials at MDC Brooklyn*
17 *to correct the conditions or even to disclose them*
18 *timely."*

19 Judge Fuhrman reached the same conclusion. "It
20 is pretty clear to me that steps could have been taken,
21 and taken more quickly, to address the problem at MDC.
22 The bottom line is, the conditions I read about are the
23 conditions that one associates with a Third World country,
24 not a country like this, and nobody in detention should
25 have to endure that, what the detainees did in MDC for the

1 eight days of subzero polar vortex conditions.

2 Now, Judge Rakoff has made a number of
3 statements that I'm sure your honor is aware of. But even
4 in 2020, in the *United States v Morgan*, the sentencing was
5 cut in half based on the conditions at MDC.

6 There are lawsuits in the federal centers
7 against the MDC for the way that they inhumely treated
8 everybody.

9 THE COURT: Mr. Kenner, I saw all of those
10 things in your submissions. I read those things.

11 MR. KENNER: Well, your Honor --

12 THE COURT: I don't want you to waste all your
13 time with the conditions at the MDC. I know what the
14 conditions are. I understand them.

15 (Continued on the following page.)
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1 (Continued from previous page.)

2 THE DEFENDANT: Your Honor, if I can just
3 surmise. When I was a business manager who worked for a
4 lot of professional athletes, probably 150 in total, none
5 of their money ends up with me, none of it. I couldn't
6 feel any worse, whether your Honor believes me or not, I
7 couldn't feel any losses sustained to investments
8 sustained by third party, group decisions I have made that
9 I can take responsibility for. I mean when I was faced
10 with the problems with some of these bad investments, the
11 first thing we did we went after the people who got the
12 money. I didn't get the money. We had the money, we
13 traced the money, filed lawsuit with independent counsels.
14 Everyone who you heard from the e-mails from one of our
15 attorneys, everyone was kept in the loop, had direct
16 access to these attorneys, including Rudy Guilliani's
17 group when it came to Mr. Constantine in the Eufora
18 transactions.

19 Your Honor, I've been told by several different
20 defense attorneys, I have a very difficult dilemma, that
21 if I continue to advocate for the truth based on the
22 voluminous evidence that was never put before this Court,
23 for whatever reason, at trial, whether it was too late,
24 never delivered to us under United States versus Gill or
25 it was just unknown and not managed by my attorney under

1 the United States v. Cronin in the Supreme Court. I can't
2 make up for that today, but I've never stopped advocating
3 for the people who lost their money. If any of it was in
4 my hands, nobody has shown that to us that yet. All of
5 the funds went exactly where they were supposed to and
6 their investments went bad. I couldn't feel worse for
7 that but I didn't run from any of that feel. I was
8 supportive, center of the target to try to get the money
9 back for these people.

10 We know Mr. Kaiser was paid back, he sent an
11 e-mail to me -- excuse me, a text message in 2011 saying
12 he still had his mom's \$2 million, his brother's \$208,000,
13 after he was paid back from everything. We know he had
14 the money, what he represented at trial wasn't true.
15 But you know people who have suffered losses in whatever
16 investments, you know, the 2009 global recession certainly
17 affected that, the Lehman Brothers bankruptcy affected
18 that, but each of the people who touched the money and
19 went after the money I stood up for them and I fought for
20 them.

21 I'm not sure about some of these other stories
22 about people running in cars by their homes and
23 threatening them, that has not been presented anywhere
24 before. I never heard the stories and there is no
25 connection to me, just like the anonymous unsigned letters

1 that the IRS triggered an IRS audit. I think there's a
2 volume of misunderstandings through the last 18 years
3 since we met Mr. Jowdy through some of our clients, and I
4 couldn't be any sorrier that we ran across that guy. If I
5 had the money, if the money had been wired off shore and
6 withdrawn if your Honor had designated \$17 million worth
7 of losses and I had simply taken that money, absconded it
8 and wired it to the Bahamas and I had it sitting in the
9 bank account I would love to have everybody have it today.
10 But none of the money passed through my hands, none of it.
11 We've been sitting here with the same guideline range at
12 this time. I know it was the same thing that happened a
13 to Mr. Shkreli so I would appreciate if you would consider
14 all of that.

15 It's tough to say sitting here and say I'm sorry
16 to take responsibility other than the actions to say I'm
17 sorry, but I don't have the money, your Honor. It's not
18 in the investments, it's not in the records. As your
19 Honor knows I even offered the government to help the GSF
20 553 and go back after Mr. Jowdy and recover the loan money
21 that is topping 33 million dollars today. I don't know if
22 the people in the courtroom know but the government has
23 recently submitted in June, July and August this year
24 affirming Mr. Jowdy and Lehman Brothers and Danske Bank
25 starting 16 years ago and continues to loot the project

1 for their own personal benefits and personal investments.
2 I wish they would all know that. I hope Mr. Nolan knows I
3 don't have any of his money. I know he believes that I do
4 because he was told that by Mr. Galioto, much like several
5 of the others but Ms. Peca told us on a 2012 call that she
6 was told by Mr. Galioto that I stole all of their money
7 and never gave the money to Jowdy.

8 Your Honor, for whatever value it is I feel
9 sorry for any losses that have occurred. I know you
10 probably don't see it as much value at this moment in time
11 but there is not much more after good investments went
12 back but to fight and recover those for our people. If
13 any of the monies were traced to me people would have come
14 after to me for that, but we have all the bank records
15 although it's not the truth. I'm sorry for the Pecas and
16 whatever they believe happened. I'm sorry for Mr. Berard,
17 we had a lot of great transactions that went bad, sorry
18 for the transactions that Mr. Kaiser's went bad and
19 affected his family, regardless whether he got the money
20 back. Nobody goes into investments and wants to lose
21 money. They go into investments to make money and that
22 was the goal, and I ultimately want to thank my kids and
23 my fiancée for being so strong through this part of the
24 process which I'm sure is equally debilitating for
25 Mr. Berard, for Mr. Peca's families for what they believed

1 happened, whether it is factually accurate or not. So
2 thank you, your Honor.

3 I appologize for going over but I thank you for
4 your patience.

5 THE COURT: Thank you, Mr. Kenner.

6 We'll have to take a break at this point so
7 we'll reconvene at 2 o'clock. I have something I'll say
8 briefly about Mr. Kenner's remarks and I'll hear from the
9 government.

10 I'll see you at 2 o'clock.

11 (Afternoon recess taken.)

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A F T E R N O O N S E S S I O N

THE COURT: If everyone can be seated: Before I hear from the government I want to say a few things in response to what I heard from Mr. Kenner today and a few things leading up to the sentencing in connection with his submissions, and having obviously presided over the trial. Mr. Kenner, I think you know this already, I think you were professional and respectful throughout the proceeding and you ably represented yourself.

It's clear you are a smart person and the victims know that as well in your defense here, but I see this as sad that you wasted all that work and all those skills towards defrauding these people.

This case is more troubling and disappointing than most that I've seen in my career. As I said before, your lack of remorse and unprecedented continued attacks on the character and credibility of the victims makes it even worse, and I don't want you to think I'm considering Mrs. Peca and the other victims' talked about threats and audits, I'm not considering those things, they are not before me. I don't know what transpired there. I'm talking about what I read with my own eyes in your submissions which made it clear that you were trying to demean, humiliate and destroy their credibility, their

1 reputation and it's a refusal to take any responsibility
2 for what you've done; blame others, blame the FBI, blame
3 the victims, blame Mr. Jowdy.

4 And with respect to Mr. Jowdy, I'll say this.
5 Mr. Jowdy wasn't on trial here. I don't know what
6 transpired in all the conversations you had with him and
7 it very well may be that he may have misled you in some
8 way and lied to you or made misrepresentations to cause
9 you to lose the victims' money. I'll know you cite that
10 back that Judge Bianco found that Jowdy did illegal
11 things, I don't know.

12 I'm willing to give you the benefit of the
13 doubt. I'm willing to give you the benefit of the doubt
14 after you gave him the money, he did things that you
15 didn't expect him to do and was inconsistent with the
16 agreement, but having said that that does not overlook
17 what you did.

18 You should not have been giving him money in the
19 first place without their authorization, I know you
20 dispute that. I found it to be incredible, the jury found
21 it incredible by their verdict, and I think the victims
22 spoke to this as well.

23 You then continued to take their money and
24 mislead them. Instead of telling them what is going on
25 with their money like a real and honest money manager

1 would do, instead you took more money from them and then
2 used that money in ways they did not authorize you to do,
3 victimizing them a second time.

4 So putting aside, whatever Mr. Jowdy did, you
5 refused to take responsible for what you did, that was
6 illegal, that was fraudulent. You don't explain credibly
7 why you used one hockey player's line of credit off, you
8 know, a Ponzi-like scheme, to pay another's line of credit
9 off in a like scheme. I'll speak to this in a moment
10 because there's a lot of complicated transactions in this
11 case. This one is so clearly illegal and fraudulent on
12 its face, and you can't even admit this one. I'm
13 referring to the diversion of the hockey players' money to
14 Mr. Gaarn.

15 Mr. Jowdy also does not explain why you
16 knowingly allowed Mr. Constantine to divert some of the
17 money from Eufora and the Global Settlement Fund for his
18 own personal use and you facilitated that knowingly.
19 Instead of taking responsibilities, all I get is the
20 hockey players have CTE, Mrs. Peca is lying, this is why
21 you got year after year, document after document, it's
22 ironic that you say you got CTE but it was clear to me
23 during the trial that the witnesses were credibly
24 testifying to your fraud.

25 You want everyone in this courtroom to believe

1 Brian Berard, Joe Juneau, Ethel Kaiser, John Kaiser, Jay
2 McKee, Tyson Nash, Owen Nolan, Kristin Peca, Michael Peca,
3 William Ranford, Steven Rucchin, Darryl Sydor and others
4 are all lying. They are all lying or misrepresenting,
5 misremembering and it's ridiculous. It's ridiculous.

6 I would point out to you because I think it was
7 also ironic that you talked about if you sign it, you own
8 it, suggesting the documents to show if they sign certain
9 things -- I point you out as you point me out in the
10 transcript page 3423, Ms. Donlan used to work for you,
11 testified to assisting you in forging the names of the
12 hockey players on bank documents, and you could not have a
13 more credible person than she were. She didn't
14 exaggerate, didn't happen every day. She testified in a
15 particular time in her memory of helping you to forge the
16 hockey players' signatures. No explanation for that,
17 Mr. Kenner.

18 Mr. Gaarn. Again, he testified to you making
19 him the manager partner of AZ Eufora as a favor to you,
20 opening a Wachovia bank account. You then backdated --
21 this is in 2008 -- you backdate a 2005 document
22 transferring membership interest to him, he puts in no
23 money into Eufora, and then you start funneling hockey
24 player money, Mr. Murray -- I think I got the names right
25 -- Mr. Ranford, Mr. Rucchin, funneling their money to that

1 bank account and then Mr. Gaarn testified you telling him
2 to wire it to you, a significant amount of money, hundreds
3 of thousands of dollars to you and other individuals who
4 should not have been getting that money. That was money
5 that if the hockey players knew all, some of it, they
6 testified to knowing, although Mr. Branford said several
7 hundred thousand even though it went there, but in any
8 event you emphasize that I never got this money. I guess
9 you overlooked that money.

10 Even in your documents, you say even assuming I
11 took that money, it's only \$280,000, whatever it was.
12 I just use that as an example you could have, you say I
13 have to walk a fine line. It would have been very easy
14 for you say look, Judge Bianco, Mr. Jowdy gave did X, Y
15 and Z once I gave him money but what I did was wrong
16 because I took their money, using it in ways I shouldn't
17 have been using it. I was doing things with it that I
18 didn't know more about and I lost more of it because I
19 didn't want to tell them I already lost X millions of
20 dollars. That's the truth but you just couldn't do. You
21 just couldn't do it.

22 I find their testimony to be fully credible and
23 Mr. Gaarn came in, and if he was so credible, you thought,
24 oh, like he owed me money. He testified I wasn't paying
25 for a personal loan. You just made that up like you do

1 when you get caught in one of your lies.

2 It's sad for me to read letters from your kids.
3 I know you have pictures there. I'm a father of six, I --
4 they clearly love you and miss you and it's sad for me to
5 hear that but you put yourself in this position and you
6 have no remorse for what you've done to the families of
7 these victims. So I'm considering that, not the same
8 time, what you've done to your own family. It is tragic,
9 the whole situation, and it's also tragic when I see these
10 letters they believe that the justice system has
11 wrongfully convicted their father. They didn't sit in the
12 trial. If they were here they would know that's not what
13 happened. But in a sense to believe going through life
14 their father has been wrongfully convicted, had that
15 grudge against the system when it's not true. You're
16 guilty and your guilty is overwhelming.

17 Mr. Constantine actually put -- there's two
18 other things about the Eufora thing I found particularly
19 noteworthy. In your forensic report you submitted to me
20 in October last year, this is your own forensic report.
21 When it got to the Eufora investment, when you say it's
22 all documented, it's supported, documents don't lie. This
23 is them saying in reference to Mr. Ranford's \$400,000 that
24 went into the bank account. Kenner has represented the
25 Constantine sole private stock for Ranford for \$200,000.

1 That's your claim. The stock sale is supported by
2 Kenner's complaint by the U.S. Bankruptcy Court in March
3 of 2013. We don't have any other records in support of
4 that that transfer was a private sale of stock from
5 Constantine to Ranford.

6 And then on your representation that Eufora was
7 independently valued by Neptune Capital at \$20 million
8 after your investment, your forensic accounting analysis.
9 We've not seen documents that support such valuations.
10 And Mr. Constantine in his conversation with you, this is
11 Mr. Constantine's own words. What do you think will
12 happen when \$700,000 shows up going from the players that
13 already voted first time to the bank account back to Tim
14 Gaarn to Eufora's bank account back to Tim Gaarn's account
15 to your account, like this will not look good, right?
16 There is so much expletive you are not thinking about in
17 this whole equation that needs to just be put to bed and
18 it goes on.

19 Here is Mr. Constantine describing this very
20 clear fraud that we can all see that you will not even
21 acknowledge. So that's the way I view this case and as I
22 said to the victims I'm not surprised to hear -- I've
23 heard a lot of apologies, I've heard a lot of remorse,
24 I've sentenced hundreds of people. I think I even wrote
25 down what you said. I'm sure the victims noted it. I

1 think you said to Mrs. and Mrs. Peca that you are sorry
2 for what they believed happened to them, I think were the
3 words. I'm sorry for what they believed happened to them
4 and the other victims you said sorry that you lost your
5 money. That is not an acceptance of responsibility.
6 Acceptance of responsibility is I'm sorry for what I did,
7 and you still can't just do that. So I am taking into
8 account some of the things you wrote about, some of the
9 things you said today, the MDC.

10 I think it's fair to take the conditions there
11 into account and you have had issues there that I think go
12 beyond the normal inmate in terms of being in the SHU for
13 having the flash drive, that was wrong. So I am
14 considering that and obviously I'm trying to get a
15 proportional sentence, but your failure in having remorse
16 what you did to the victims is giving me great remorse.

17 I think Ms. Peca said I have no assurance and
18 confidence that you will not go out and do this again.
19 Someone who is refusing they recognize they did anything
20 wrong who is smart as you are, maybe not as a money
21 manager, I don't know who would give you their money given
22 in case, but if there is a way, I have no confidence that
23 you would do it again and that is unusual when I sentence
24 somebody.

25 Before I sentence you, I'll hear from the government.

1 MS. KOMATIREDDY: Thank you, your Honor.

2 I want to start by thank the Court for your
3 attention to detail as an incredible amount of work that
4 your Honor's clerks and your chamber's staff put into this
5 case. This Court presided over a nine-week trial,
6 multiple hearings and thousands and thousands of pages of
7 transcripts and issued multiple lengthy opinions
8 confirming that the evidence set forth at trial proved the
9 defendant's guilt beyond a reasonable doubt.

10 This Court knows the truth better than anyone
11 and you've been gracious in retaining supervision in this
12 case to make it possible for all of that knowledge to be
13 brought to bear in imposing sentence. So what I would
14 like to do is take this time to briefly respond to some of
15 the arguments the defendant made, highlight what the
16 government believes are the most important considerations
17 in the sentencing analysis under 18 USC 3553(a) speaks for
18 some of the victims who did not speak today and explain
19 why the government has proposed a sentence of at least
20 20 years incarceration for this defendant.

21 One of the most pernicious aspects of the defendant's
22 offenses is how he built relationships of trust with young
23 men at the start of their careers and exploited their
24 relationships. It's important to keep in mind that when
25 Mr. Kenner met many of his victims, they are young men

1 only just starting out in their careers, only just
2 starting to make money. Mr. Nash testified at trial prior
3 to being an NHL player he was a pizza delivery guy.

4 Mr. Sydor testified he worked at his uncle's
5 plumbing business, PDQ Plumbing.

6 Mr. McKee testified he only made 45 to \$50 a
7 week, lived with his parents who were in debt to the tune
8 of about 70,000 to \$80,000, that he himself didn't have
9 and money.

10 And Mr. Rucchin testified that it was his first
11 job, his first paycheck that he handed over to Kenner for
12 investment. These were young men trying to be
13 responsible, aware they were entering a career that could
14 be lucrative but also a career that could end and any time
15 and Mr. Kenner was well aware of that.

16 He induced these individuals to place their
17 trust in him because he sold himself as someone who was a
18 former college hockey player himself, who understood them,
19 who would have their back, not take the shirt off their
20 backs. He carefully cultivated those client relationships
21 into close friendships.

22 Joe Juneau testified that he was the best man in
23 Mr. Kenner's wedding and Mr. Kenner was the best man at
24 his.

25 Mr. Peca testified that he was like Jerry

1 McGuire. Mr. Nolan called him like a brother. And
2 Mr. Gonchar at trial acknowledged photos where they were
3 celebrating the Stanley Cup win together the night he had
4 won it.

5 Mr. Kenner specifically targeted these
6 individuals because they were vulnerable at a time in
7 their careers where they were making a lot of money but
8 didn't have the sophistication to know how to invest it.

9 As Mr. Nash testified he also knew that hockey
10 players were loyal, loyal like dogs, and he exploited all
11 of that. When Mr. Kenner exploited those relationships he
12 stole more than money, he stole trust, he stole their
13 sense of security and he put them in a sense of
14 desperation. As Mr. Juneau said at trial, it kept him
15 awake at night.

16 The other thing that really sets this offense apart and
17 the nature and circumstances of the offense apart is how
18 the exploitation of that relationship happened time and
19 time again. This was a sustained and persistent fraud
20 where one lie led to another and one scheme led to
21 another.

22 At trial, the government proved three schemes
23 over the course of approximately a decade that victimized
24 more than a dozen people. Fourteen victims testified at
25 trial as the Court recounted. They suffered millions of

1 dollars in losses and those millions of dollars all ended
2 up in the defendant's and his codefendants' pockets.
3 That's what sets this apart from a typical fraud case.
4 But this was also more than fraud. There were multiple
5 aggravating factors as the trial testimony also showed.
6 There was forgery, there was obstruction, there was
7 perjury, there was invasion of privacy and there was
8 harassment that continued until this day. The Court saw
9 and heard these things with its own eyes and ears and
10 recorded phone calls that were introduced at trial when
11 Mr. Kenner told conflicting stories to the Pecos and has
12 seen and heard the same in the 8000 plus pages of filings
13 that Mr. Kenner has put in since the conviction in this
14 case.
15 Now, I want to be clear, Mr. Kenner has every right to
16 file post-trial motions and have a sound basis in fact and
17 law and that's not what we're talking about here. What
18 we're talking about is the harassment, the insults, the
19 threats, the personal attacks, telling the victims that
20 they have brain damage, faulty memory in fabricating
21 things and repeatedly badmouthing them as bad apples to
22 others, telling them the facts that were proven beyond a
23 reasonable doubt were not facts.
24 This is more than fraud. It is malicious and for the
25 victims the mouse never stops.

1 What is even more shocking is the defendant's
2 complete lack of remorse. The Court saw this again today.
3 Mr. Kenner stated just a few minutes ago, that there were
4 a lot of misunderstandings, that this went terribly
5 sideways. That is not an apology. Shortly after stating
6 that, he then blamed Mr. Kaiser, Mr. Manfredi and others
7 for the losses in this case.

8 Mr. Kenner also stated none of the money ends up with me,
9 none of it. I didn't get the money. That is a stunning
10 rejection of the truth.

11 As the Court will recall, the government put in
12 reams of bank records and summary charts that showed in
13 every instance a hockey player putting money into an
14 investment and that money ending up in Mr. Kenner or
15 Mr. Constantine's pockets for paying off their personal
16 expenses time after time after time. Those were
17 government's charts one through twenty. Sometimes it was
18 the same day.

19 The Court will recall one of the most stunning
20 examples was the first investment in Eufora where
21 Mr. Kenner persuaded Mr. Peca to put \$100,000 into Eufora
22 and when you look at the bank records Mr. Kenner signed
23 using his power of attorney, \$100,000 of Mr. Peca's money
24 straight into Mr. Constantine's personal account and the
25 same day it was wired straight into Mr. Kenner's personal

1 account. That is only one example.

2 The Court will also recall that all of these transfers
3 were intentional because text messages recovered from
4 Mr. Constantine and Mr. Kenner showed real-time
5 coordination between the two and specifically referenced
6 the transactions. To say that none of the money ended up
7 with Mr. Kenner is completely inexplicable and highly
8 concerning because a defendant who fails to acknowledge
9 reality is truly dangerous. He appears to be convinced of
10 his own lies, convinced that he is a hero in every story,
11 convinced that everyone else is the problem and someone
12 who is convinced of that will never stop what he's doing.
13 Indeed the letters that have been written in support of
14 him by his family and by others who still believe his
15 story, underscore this point. They repeatedly say he will
16 not stop fighting, in other words, he will not stop
17 insisting that his fraud is real and he will not stop
18 victimizing these victims. That is what makes this
19 sentencing difficult.

20 There is a level of depravity here that we rarely see. I
21 want to address a couple of the points that Mr. Kenner
22 made.

23 First, he went into a relitigation of the case. The
24 government did not hear anything in Mr. Kenner's statement
25 that calls for a response beyond what we've already

1 briefed in this case.

2 Second, Mr. Kenner spoke of his children and his fiancée
3 and how they have suffered.

4 Now it's always difficult to talk about family
5 and the consequences that this criminal justice process
6 has on family because the consequences of a defendant's
7 decision to commit a crime is often borne most heavily by
8 others, including the defendant's innocent family and
9 friends. That has to be acknowledged and recognized in
10 the 3553(a) analysis. But the question under the law and
11 in accordance with the precedent that the government cited
12 in his brief is whether the harm suffered for this
13 particular defendant is far outside the heartland of the
14 kinds of crime suffered by any defendant who is taken away
15 from his family. And I think when you look at the law in
16 this area, it is simply not in this case. It is not
17 outside the heartland. Unfortunately this defendant
18 inflicted this harm himself when he made the decision, the
19 repeated, deliberate, calculated decision over ten years
20 to defraud his victims.

21 Third. Mr. Kenner referenced the Shkreli case and asked
22 for a comparable sentence of 84 months. This Court is
23 very familiar with the Shkreli case, but it's safe to say
24 that that case was different and the factors were
25 different.

1 I will not say anything to suggest that Mr. Shkreli
2 merited a lower sentence than or the sentence that he got
3 as opposed that the government advocated for in that case
4 which was 15 years, but I will note at least Mr. Shkreli
5 at least pretended to apologize at his sentencing and the
6 loss amount in that case was different because at the end
7 of the day the victims were paid back with stolen money.
8 In any event, there are too many differences to compare
9 the two cases. Mr. Shkreli's victims involved
10 sophisticated investors. The victims in this case as I
11 said before were young men who were reaching out to Kenner
12 and were relying on him for his sophistication, for his
13 financial expertise as their financial advisor.
14 Fourth. Mr. Kenner mentioned the MDC and the conditions
15 that have been in place during that time. I want to note
16 two things in that respect. The conditions of the MDC
17 during COVID of course have been different as they have
18 been for all of us during this time. Everyone has been on
19 a certain kind of lockdown and so part of this has to be
20 placed in context. But when Mr. Kenner talks about the
21 COVID situation being negligent or grossly negligent, it's
22 important to note that MDC's management of the COVID 19
23 pandemic has been the subject of litigation most notably
24 in Chenn v. Edge, and Judge Kovner has found the MDC was
25 not grossly negligent, that they have gone to great

1 efforts, great lengths to keep prisoners safe and that
2 they have in fact had a very low infection rate and a very
3 low hospitalization rate.

4 With respect to Mr. Kenner's other complaints regarding
5 the handling of emergencies at the MDC, that is also the
6 subject of litigation and monitoring under a current case
7 that is currently being supervised by Judge Brody and that
8 is proper place to litigate the MDC and its actions, not
9 here. It does not help Mr. Kenner to shift the focus from
10 himself to the MDC.

11 His crimes require a severe punishment and any
12 treatment that he has had or mistreatment at MDC would be
13 resolved after sentencing once he's transferred out of
14 that institution.

15 I will also note that the MDC has given Mr. Kenner special
16 access to a laptop that as of last week when I spoke with
17 them I was advised he's the only inmate with access to a
18 laptop and the only one permitted to leave his particular
19 cohorts at MDC for the purpose of COVID in order to go to
20 the visiting room and use his laptop, so they have been
21 particularly accommodating with Mr. Kenner to ensure he
22 can represent himself in this case.

23 I will conclude by turning to the 3353(a) factors for the
24 Court. Every single one of these factors militates a
25 severe sentence. The nature and the circumstances of the

1 offense show that the offense was particularly pernicious,
2 involved a breach of trust and repeated calculated
3 manipulation and theft from the victims over the course of
4 a decade.

5 The history of the characteristics of the
6 defendant showed that he completely lacks any capacity for
7 remorse or reformation.

8 The seriousness of the offense is reflected in
9 the millions of dollars that have been lost and the
10 generations that will pay for that.

11 The need to promote respect for the law is even more acute
12 here with the defendant who has obstructed justice and
13 uses the laws as a tool for harassment instead of a tool
14 for justice.

15 The need to provide deterrence and protect the
16 public from further crimes is again extraordinarily great
17 in this case where this defendant shows no signs that he
18 will change.

19 In one of the things I've seen as an attorney in this case
20 is that the lawyers come and go, and for us as lawyers in
21 this case the case will end, but for the victims it will
22 never end. This will go on.

23 Kenner has spent 18 years lying to them,
24 stealing from them, demeaning them, harassing them, and
25 his total lack of remorse, his utter failure to

1 acknowledge any wrongdoing and his frank refusal to accept
2 any responsibility provide this Court with every reason to
3 believe that Kenner will continue victimizing these people
4 for another 18 years.

5 For those reasons the government requests a sentence of at
6 least 20 years imprisonment. The guidelines advise it,
7 this Court's probation department recommends it and this
8 defendant's unrelenting determination to continue
9 perpetrating the fraud and committing acts of malice
10 against its victims necessitates.

11 Thank you.

12 THE COURT: All right. Thank you, Ms.
13 Komatireddy.

14 I'll now describe the sentence I wish to impose
15 I'll give the parties a final opportunity to make legal
16 objections before I impose the sentence on Mr. Kenner.

17 MR. TALKIN: Your Honor, I'm sorry. There is
18 one fact I'd like to put on the record because it may go
19 into your calculus into your sentencing. It's brief and
20 it's about Eufora which you raised before. You had asked
21 me for periodic updates what was happening with Eufora and
22 the status we have right now is they are moving along with
23 the SEC process but nothing has been made firm yet.

24 However, we have been authorized to release the shares and
25 the company that did purchase Eufora and they were

1 purchased by AZ Eufora Partners, so those will be given to
2 the government this week.

3 I can't tell you what value they have or any, so
4 I will not represent that to think about in the sentence
5 but I just want you to know this fact exists.

6 We also have a breakdown of the shares we
7 believe the individual members of AZ Eufora who were many
8 of the victims here. There is one hockey player who is
9 actually in his name from other transactions but separate
10 from that individual, they'll be separated with their
11 percentages what they put in the AZ Eufora and we
12 anticipate they may be able to trade those privately and
13 if they'll be able to make those own decisions if they
14 want to hold them when they are able to traded publicly.
15 I know from Mr. Constantine's point view he wants the
16 victims to be able to make or have the opportunity to get
17 some recuperation from the sale of the stocks or to keep
18 them, and I assume Mr. Kenner shares the same sentiment.
19 I don't know if he does, I'm not in a position to speak
20 for him, but I don't think it's fair for your Honor to not
21 know that before sentencing.

22 THE COURT: Thank you, Mr. Talkin, for placing
23 that on the record.

24 Obviously we'll discuss more with respect to the
25 restitution issues, but based upon what you are saying it

1 doesn't seem we'll know what particular value it will
2 have; is that correct?

3 MR. TALKIN: That's correct.

4 THE COURT: In imposing sentence today I've
5 carefully considered as I'm required to the factors set
6 forth by Congress in Section 3553(a). I'm considering all
7 the factors, although I'm not listing all of them, the
8 nature and the circumstances of the offense, the history
9 and characteristics of Mr. Kenner, the need for the
10 sentence imposed today to reflect the seriousness of the
11 offense, to promote respect for the law, to provide a just
12 punishment for the offense, to afford adequate deterrence
13 for criminal conduct and to protect the public from
14 further crimes by the defendant.

15 I've also considered as we discussed at the
16 prior sessions before the pandemic, the advisory
17 sentencing guidelines issued by the sentencing commission,
18 the applicable advisory range in this case as well as the
19 applicable policy statements issued by the sentencing
20 commission.

21 I've also considered the need to avoid
22 unwarranted sentencing disparities among similarly
23 situated defendants.

24 Mr. Kenner in his submission as he highlighted
25 today as his many cases he wanted to bring to my attention

1 involving fraud. I looked at those. I'm familiar with
2 what other judges have sentenced to, based upon my own
3 experience, and I'm also familiar with the sentences I've
4 imposed in fraud cases and I'm considering this factor
5 very carefully.

6 I've also -- I'll not do it today but I'll
7 consider the factor regarding restitution at a future
8 date.

9 Having carefully considered those factors and all the
10 3553(a) factors I find in the exercise of my discretion
11 that a sentence of 17 years total sentence is the
12 appropriate sentence in this case.

13 I'll now state how I arrived at that particular
14 number. It's 204 months. I emphasize first that this
15 sentence is not being driven by the guideline calculation,
16 we spent an exhaustive amount of time reaching that
17 calculation but my sentence would be the same regardless
18 of that guideline calculation. This is being driven by
19 the other 3553(a) factors and would not be affected by any
20 recalculation of that range and I'll explain which of the
21 3553(a) factors in particular resulted in the sentence.

22 Similarly Mr. Kenner made reference to downward
23 departures for families and age and things like that in
24 his papers. With regard to the guideline calculation,
25 that my understanding of my discretion to depart from the

1 guidelines based upon those types of factors I don't
2 believe that his circumstances warrant such a departure
3 under the guidelines. I didn't want it to appear that I
4 missed that. I'll also note I made reference to his
5 letters, the two different letters I received at different
6 times from his children. I didn't want him to think I
7 didn't read all the records. His fiancée has health
8 issues. I read the letter from his mother, from the
9 inmate, I've read all of those letters and have considered
10 them in addition to Mr. Kenner's outlining of things that
11 he has done in the jail to try to help other inmates, so
12 that is not overlooked.

13 People may disagree with the number I arrived at
14 one way or the other but I can assure the public and
15 everyone here including the victims that I carefully
16 thought out and reweighed all the factors.

17 I understand the seriousness of these decisions
18 and the impact it has on people's lives and the
19 difficulties it has. I spent many, many hours, many years
20 considering and reading in order to make sure I'm properly
21 weighing all the factors.

22 The first factor the government pointed out and
23 I want everyone to understand, including Mr. Kenner, how I
24 arrived at the number. I want to emphasize how serious
25 this offense is. This is a massive multifaceted fraud

1 scheme as the government noted, went on for many years, it
2 was deliberate, complicated. I made reference to the
3 Eufora, Mr. Gaarn at the time we had to highlight and
4 rebut some of the things Mr. Kenner said today that were
5 not true, but many of these transactions are very
6 complicated and the bottom line is the victims trusted
7 him, he was there, whatever you want to call it, money
8 manager, financial advisor. He befriended them and they
9 trusted him and he abused that trust and he betrayed them
10 over a long, of time through a web of deception and
11 continued taking money from them, using unauthorized ways
12 often for his personal benefit.

13 So this is a massive fraud with devastating
14 financial and emotional impact on the victims as we've
15 heard a lot of that today, very powerfully. So the
16 sentence has to reflect the harm that was caused, the
17 seriousness of the scheme and provide just punishment for
18 the crime and the harm that was done to these victims.

19 In terms of history and characteristics,
20 normally someone who does not have any history criminal,
21 that that is a mitigating factors, he has had no trouble
22 with the law before, but I'm faced with someone who has no
23 remorse, who lied over and over again at the trial and
24 even post-trial, blaming everybody but himself, the
25 victims.

1 The government, Mr. Jowdy, I don't want to
2 repeat what I said before, and the bottom line is he has
3 in my view through the demeaning and attacks on the
4 credibility of these victims over the years, shown that he
5 has no remorse and as I said continues to pose an economic
6 danger to society upon getting out. I didn't know this
7 before and one of the victims made reference to this.
8 It's not just -- obviously they worked very hard for this
9 money and everyone knows a hockey player has limited time
10 he can make that money in the league, especially given all
11 the injuries, but I had a page number and I didn't mark
12 it, but it was more than once that Mr. Kenner, I forget
13 which player it was, noted the money he got was only some
14 small percentage of his overall income, sort of suggesting
15 like, oh, it wasn't that much of their personal money. I
16 just find that mentality unbelievable, unbelievable for
17 him to even suggest he could have made other money, that
18 he didn't defraud them of and take, and somehow that is a
19 mitigating factor. It just highlights the lack of
20 remorse, the need for society to be protected from him for
21 a long time.

22 So this sentence is necessary to send a message
23 to him and also I think a general deterrence message is
24 important. There are people out there now who are
25 managing people's money, who will be managing their money

1 in the future who need to be sent a message if they commit
2 a fraud like this they will be going to jail for a very
3 long time. Certainly the government, the sentence
4 proposed today is 20 years is a reasonable one and I think
5 if those were the only factors even supporting a 25-year
6 sentence, but I believe Mr. Kenner doesn't have a lot of
7 mitigation unfortunately in his favor, especially given
8 his lack of remorse, but I don't believe -- I believe the
9 government's sentence is a little bit too high for a
10 couple of reasons.

11 Primarily, I do think the time at the MDC
12 warrants some consideration as a mitigating factor. In
13 general, you know, we don't have to get into the details
14 of litigation and things like that, but the bottom line it
15 is a pretrial facility, it's not the same as being
16 designated to another facility in terms of conditions of
17 confinement and this has been a particularly bad, at the
18 MDC because of the blackout and other things that have
19 happened there regardless of whose fault they are.

20 The bottom line is Mr. Kenner was experiencing
21 those things and as I pointed out he has pages and pages,
22 almost like a diary, going through each incident with the
23 MDC with the guards and things like that, but, you know,
24 we all know he was put in the SHU even though he was
25 allowed to have that flash drive and even though the

1 pandemic was under control at the facility, the fact being
2 in jail under the pandemic makes the time worse. So that
3 deserves some mitigation here.

4 The other thing the Court believes in terms of
5 why his sentence should be imposed is a little bit too
6 high, Mr. Kenner pointed to the Shkreli case. We can't
7 take one case and suggest where that becomes a benchmark
8 for the other case. I would note there are plenty of
9 cases. I'll point out a few of the sentences in this
10 range that state a 15 to 20-year range in the loss amounts
11 similar to what Mr. Kenner has, including U.S. v. Norman,
12 240 months, loss of 2.5 to \$7 million.

13 U.S. v. Williams, 240 months, intended loss of 4 million.
14 U.S. v. Burke, 210 months, loss amount between one and 2.5
15 million.

16 U.S. v. Feldman, 188 months, \$2 million loss.

17 U.S. v. McGinn, 180 months, \$6 million loss.

18 Abreu, \$180 months, 1.3 million loss.

19 Again, I don't want to get too cause up in the individual
20 cases because every case is different and I doubt any of
21 these cases had the defendants not only showing no remorse
22 but on behalf of the victims after years of the trial.

23 In any event I think 20 years -- there's one
24 case actually, Michael Romano who I presided over his
25 trial that involved a massive telemarketing fraud scheme

1 that focused on elderly people, taking all their money
2 through telemarketing with gold coins and it was a
3 horrific scheme with the vulnerable, and I had to recuse
4 myself after the case after trial and Judge Johnson gave
5 him 20 years which I think was appropriate, but I had that
6 sentence in my mind, so Mr. Kenner shouldn't get the same
7 sentence as Mr. Romano.

8 I don't want the victims to take that the wrong
9 way because you all understand how serious I view what he
10 did to you in this case but I'm trying to make it
11 proportional not only sentences generally but sentences
12 that have happened in my courtroom too. So that's how I
13 arrived at the 17-year sentence.

14 I intend to impose that amount on every count to
15 run concurrently. I'm going to impose three years of
16 supervised release that will follow the term of
17 imprisonment. I intend to impose all the special
18 conditions that are in the recommendation, seven of them,
19 except the eighth one which is a search condition which I
20 don't believe is warranted in a fraud case, that's when
21 there is some type of contraband. I believe all these
22 other conditions are necessary to ensure Mr. Kenner
23 doesn't return to fraud in terms of his employment and
24 also to monitor his finances to try to make sure he
25 complies with the restitution order that I will set at

1 another date.

2 I intend to impose a \$100 special assessment for
3 each account for a total of \$600. Although obviously he
4 has ongoing ancillary proceedings with respect to
5 forfeiture, I intend to order the forfeiture with respect
6 to Mr. Kenner that I ordered in the preliminary order of
7 forfeiture I signed on March 13, 2020, which will be final
8 as to him, not prejudicing other individuals or other
9 entities rights with respect to their interest in that
10 property.

11 Is there anything else the government -- is there any
12 legal reason why I cannot impose that sentence?

13 MS. KOMATIREDDY: Just one thing, your Honor.
14 One technical note, your Honor. The Second Circuit
15 recently found Standard Condition 12 to be inappropriate
16 under the law. That's the condition with respect to risk
17 notification by the probation officer, and our suggested
18 addition is that rather than the probation officer being
19 empowered to direct risk notification on his or her own,
20 for that to be subject to the approval of the Court.

21 THE COURT: Yes, I'm aware of that case law. I
22 didn't realize the standard condition in this district.
23 The standard condition is written that way?

24 MS. KOMATIREDDY: Yes, your Honor. I believe it
25 is still written that way because that was a pretty recent

1 case.

2 THE COURT: All right.

3 I'll make sure that the risk notification
4 provision is modified to reflect that no notification
5 would be done without -- I have to approve the risk is
6 necessary for notification and approve the notification of
7 any employer or any person.

8 Mr. Kenner, I'm not asking you to have an opportunity to
9 reargue anything. The only question is are you aware of
10 any legal reason why I cannot impose this sentence,
11 preserving all your objections you previously noted?

12 THE DEFENDANT: No, your Honor.

13 I would also like to thank the Court for your
14 time and consideration in applying the sentence and I just
15 want to apologize for the government for the time it has
16 taken to get through this beyond the normal course as
17 you've described, typically six months after a trial. I
18 apologize for the extra five years of time and resources
19 it has cost the government and your Honor.

20 THE COURT: Well, I wasn't blaming you for the
21 delay. Obviously the government noted you have every
22 right to assert your rights in this case so I wasn't
23 blaming you for it. These were all things that happened
24 in the case, they were all proper, it just took time and
25 the government pointed out your 6000 pages of submissions,

1 other than the disparity of the victims. I didn't mind
2 that either. The defendant was working hard to, you know,
3 represent himself. I have no issues with either, but
4 certainly the substance of some of things you wrote in
5 there were certainly highlighted and concerning to me.
6 I'll now impose the sentence.

7 We'll talk about setting a date for restitution,
8 the restitution portion.

9 THE DEFENDANT: Your Honor, if I could ask one
10 question of the Court.

11 THE COURT: Yes.

12 THE DEFENDANT: Is there a standard objection
13 that needs to be filed just to preserve rights under
14 Booker or any other case law I might not be aware of at
15 the moment?

16 THE COURT: No. You've objected to my
17 guidelines calculations. All your objections with respect
18 to the guideline calculations I overruled, all preserved,
19 and you are objecting to the sentence I impose, right,
20 today?

21 Correct?

22 THE DEFENDANT: I just wanted to make sure if I
23 needed to do that, that it's on the record, your Honor.

24 THE COURT: That's fair. It's preserved for
25 purposes of appeal.

1 THE DEFENDANT: Okay.

2 THE COURT: Mr. Kenner, you'll not be designated
3 yet because we still have to do the restitution portion
4 which I hope to do in the next couple weeks --

5 THE DEFENDANT: -- your Honor, I apologize,
6 because of my hearing loss --

7 THE COURT: I said you will not be designated
8 yet because we have to do the restitution portion of the
9 case which I hope to do within the next couple weeks, but
10 I have no issue recommending a place of designation that
11 would allow your children, you said they can't afford to
12 visit you, but if you want me to tell the Bureau of
13 Prisons to designate California, Arizona. I don't know
14 where are they.

15 THE DEFENDANT: I'm not aware where they will be
16 at the time of designation but I'll let the Court know
17 soon enough.

18 THE COURT: Send me a letter. They don't have
19 to recommend what I'm saying, but it's important where a
20 defendant serves their time. You tell me where they can
21 visit you.

22 THE DEFENDANT: I appreciate that, your Honor.
23 One last question -- I believe it is one last.

24 With respect to the signing of the J and C, are
25 you just planning to hold that until after the final

1 restitution issue?

2 THE COURT: Yes, I can sign it and check
3 deferring restitution, because I think the restitution, I
4 hope will happen within the next couple weeks, I'll just
5 not issue the judgment. So your time to file the appeal
6 will not run until the judgment issues, so Mr. Brissenden
7 will keep you informed as to the time when that happens.

8 THE DEFENDANT: Thank you. Will we be handling
9 it just because of the COVID issues, will we be handling
10 the restitution issue by video conference which I don't
11 have a problem with if your Honor --

12 THE COURT: I was going to ask you your
13 preference, but let me sentence you first and then we'll
14 discuss that, Mr. Kenner.

15 It's the judgment of this court in its
16 discretion in considering all the 3553(a) factors that you
17 be sentenced to the custody of the Attorney General
18 through the Bureau of Prisons to a term of imprisonment of
19 17 years, 204 months on each count of conviction, Counts
20 One, Two, Three, Four, Seven and Nine, all to run
21 concurrently to each other for a total of 17 years.
22 I impose three years of supervisory release on each count
23 which run concurrently to each other by operation of law.

24 I impose the standard conditions with a
25 modifying risk notification provision to indicate that I

1 have to approve any use of that particular provision in
2 terms of whether the risk has been demonstrated and
3 whether notification should be made.

4 I impose the following special conditions of
5 supervised release.

6 One. You shall maintain full-time verifiable
7 employment.

8 Two. You shall comply with the restitution
9 order I shall set on another date.

10 Three. You shall comply with the forfeiture
11 order I'm imposing in connection with the sentence.
12 For. Upon request you shall provide the U.S. Probation
13 Department with full disclosure of your financial records
14 including co-mingled income, expenses assets, liabilities
15 to include yearly income returns with the exception of the
16 financial accounts reported and noted within the
17 presentence report. You are prohibited from maintaining
18 individual and/or joint checking, savings or other
19 financial accounts, for either personal or business
20 purposes without the knowledge and approval of the U.S.
21 probation department.

22 You shall cooperate with the probation officer
23 in the investigation of your financial dealings and shall
24 provide truthful monthly statements of your income and
25 expenses.

1 You shall cooperate in the signing of any
2 necessary authorization to release information forms
3 permitting the U.S. probation department access to your
4 financial information and records.

5 Five. You shall cooperate with the U.S.
6 Probation Office in the investigation and approval of any
7 position of self-employment, including any independent
8 entrepreneurial, or freelance employment or business
9 activity. If approved for self-employment, you shall
10 provide the U.S. Probation Office with full disclosure of
11 your self-employment and other business records, including
12 but not limited to all of the records identified in the
13 Probation Form 48F, a request for self-employment records
14 or otherwise requested by the U.S. Probation Office.

15 Next. You are prohibited from incurring any new
16 credit card -- new credit charges, opening additional
17 lines of credit or incurring any new monetary loan
18 obligation or debt, by whatever name know, without the
19 approval of the U.S. Probation Office.

20 You shall not encumber or liquidate interest in
21 any assets unless it is in direct service of the
22 forfeiture and restitution obligation or otherwise has the
23 express approval of the Court.

24 You shall not possess a firearm, ammunition, or
25 destructive device.

1 I impose a \$100 mandatory special assessment on
2 each account for a total of \$600. I didn't mention
3 before, but I'm imposing no fine given the forfeiture
4 given what I expect to be a very high amount of
5 restitution and given his incarceration for a very long,
6 of time. I don't believe a fine is warranted.

7 I do impose forfeiture. I will not read it into
8 the record. I incorporate it by reference the Court's
9 March 13, 2020 preliminary order of forfeiture which I'm
10 making finalized to Mr. Kenner and will attach to his
11 judgment of conviction.

12 The total amount of the \$17,706,395 is the
13 forfeiture money judgment and then it lists on multiple
14 pages all the properties whose interests -- his interest
15 he's forfeiting.

16 Mr. Kenner, I need to advise you of your statutory right
17 to appeal.

18 You have a right to appeal the Court's
19 conviction of sentence. If you are unable to pay the
20 costs to appeal, you may apply to appeal in forma
21 pauperis. Even though you've been representing yourself
22 here, you can get an attorney on appeal. If you cannot
23 afford an attorney one will be appointed to represent you
24 on appeal.

25 As we've discussed, a notice of appeal must be

1 filed within 14 days of the judgment of conviction which
2 will be issued following the restitution order of the
3 court.

4 So in terms of the date for the restitution, I
5 was thinking soon after Mr. Constantine's sentencing which
6 I think we've scheduled for November 5th, right?

7 MR. TALKIN: November 10th.

8 THE COURT: 10th. So maybe a week after that.

9 Before we September the date, figure it out,
10 Mr. Kenner. As you know I required you to be here in
11 person because I think it is important sentencing someone
12 in the courtroom and not on video, but I would prefer to
13 have you here in person for the restitution because I
14 think it's better, not only with the technology but I also
15 know they'll quarantine you again upon return to the jail.
16 So you tell me if you want to be on video. I don't have a
17 problem with that. So I don't know if you want to think
18 about it. Send me a letter or tell me.

19 THE DEFENDANT: Your Honor, I appreciate you
20 asking and I prefer to do it by video. The quarantines
21 are now running in the neighborhood of 28 days.

22 THE COURT: On return to the jail, 28 days?

23 THE DEFENDANT: Yes, sir, your Honor.

24 THE COURT: Has the government heard about that?

25 MS. KOMATIREDDY: I'm not aware of that.

1 THE COURT: Whether it is 14 or 28 days, the
2 government has no objection to that?

3 MS. KOMATIREDDY: No objection, your Honor.

4 THE COURT: So I think we have to do it on a
5 Monday, Wednesday or Friday.

6 THE DEPUTY CLERK: One second, Judge. I need to
7 double-check.

8 Counsel can you be available November 18th at
9 10:30, video?

10 THE COURT: Is that okay, Mr. Brissenden?

11 MR. BRISSENDEN: I'm sorry, your Honor, I was
12 speaking with Mr. Kenner.

13 What was the date?

14 THE DEPUTY CLERK: November 18th at 10:30. It's
15 a Wednesday.

16 MR. BRISSENDEN: I'm available.

17 MR. TALKIN: Your Honor, is it okay both myself
18 and Mr. Constantine call in on that appearance?

19 THE COURT: Yes, for the same reason. But if
20 you would rather do it here in person we can do it on a
21 different date.

22 MR. TALKIN: I don't think we need a change of
23 date. We've made our point on those issues. I don't
24 think those issues are germane to that litigation.

25 THE COURT: You can appear by phone and/or video

1 but phone is fine.

2 MR. TALKIN: I'll talk to the staff and see what
3 we can do.

4 THE DEFENDANT: And phone is fine with me too,
5 your Honor. We don't have to make special video
6 arrangements.

7 THE COURT: No, we'll do video.

8 One other thing on the record. It will take a
9 minute. I saw Mr. Kenner's filings and his forensic
10 report and made reference to my opinion with respect to
11 the Global Settlement Fund and I wanted to clarify the
12 record. He seems to suggest in his filing I made it a
13 finding that the loss amount for the Global Settlement
14 Fund was a little over \$17,000 and it kept being repeated
15 over and over again and it was cited to my 93 page opinion
16 in October of 2017 denying the motions by the defendants
17 for a new trial or judgment of acquittal.

18 I want to clarify so I don't think anybody
19 reading the opinion needs to think that I made that
20 finding but to be clear for the record, this is around
21 page 59 to 60 of the opinion. That \$17,000 reference was
22 me saying even assuming arguendo that the jury credited
23 the defense witness, Mr. Gonchar, even if they credited
24 his testimony, that I was trying to show that it still
25 wouldn't have covered the money taken out of the Global

1 Settlement account for personal expenses by
2 Mr. Constantine. But I don't -- that was not my
3 conclusion, that that was the loss amount, and also I was
4 not concluding that Mr. Gonchar's testimony was credible.
5 In fact I want the record to be clear I did not find him
6 credible on that testimony.

7 As I recounted in that opinion, he initially
8 said he didn't remember telling Mr. Constantine that he
9 could use Mr. Gonchar's three subsequent GSF
10 contributions, I think for over one million dollars for
11 personal expenses but he later clarified it was his
12 "understanding." It was like as long as Mr. Constantine
13 was going to pay it back he didn't mind him using it I
14 guess for whatever purposes. I did not find that
15 testimony to be credible. So I think that is important.

16 To the extent any of these things can be
17 considered for purposes, I think they are all part of the
18 jury's verdict, but to the extent it falls back to
19 relevant conduct, my loss calculations that I put on the
20 record back in February are all based upon my view of the
21 credible evidence and I emphasis "credible evidence" with
22 respect to each of these frauds that were testified to at
23 the trial as well as the forfeiture hearing. So that was
24 even assuming arguendo argued to show the conviction is
25 still standing under that worst case scenario for the

1 government, but obviously that is not the standard for
2 purposes of that motion and not the standard for purposes
3 of what I can consider in sentencing.

4 All right. I don't think I have anything else.

5 I want to say to the victims, I appreciate your
6 patience today. You are welcome to come back for
7 Mr. Constantine's sentencing obviously in November, and if
8 you want to listen to the restitution portion of this,
9 because obviously you have an interest in that, there is a
10 call-in number that you can listen on audio to what has
11 transpired with respect to that. But I don't want you to
12 feel if you don't make it back for Mr. Constantine's
13 sentencing and/or on the restitution portion of the
14 proceeding, that I'll take that the wrong way, that you
15 are not interested. I understand you have an interest but
16 I also understand you have lives to live and may not make
17 every court proceeding. I think the government checked
18 with you but if for some reason you want to be present and
19 that date is no good, I'm prepared to move it. If you
20 want to be here we'll make sure you can make it, but I
21 don't want you to think if you are not here I will not
22 remember what you said today.

23 I wish you all and your family the best.

24 Anything else from the government?

25 MS. KOMATIREDDY: Not from the government, your

1 Honor.

2 THE COURT: I'm reminded I guess because there
3 was a superseding indictment, there are underlying counts
4 on the original indictment.

5 Does the government wish to dismisses any
6 underlying open counts?

7 MS. KOMATIREDDY: Your Honor, the superseding
8 indictment contained all the same counts as the underlying
9 indictment and the jury reached a verdict as to each. I
10 don't believe so but we move to dismiss the underlying
11 indictment.

12 THE COURT: The underlying indictment obviously
13 is not the indictment for purposes of the trial and it is
14 dismissed.

15 Anything else we need, Mr. Kenner, today?

16 THE DEFENDANT: No, sir. Thank you very much.

17 THE COURT: Thank you very much.

18 (Proceedings adjourned.)
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